Bar Wars: Contesting the night in British cities

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Contents

Abstract

The usage and meanings of public space within the night-time city have been issues of contestation for centuries. This thesis employs primary and secondary historical literature, formal and informal interviews and participant observation to trace the evolution of such contestation and explore some of its current manifestations. In doing so, the thesis charts the emergence of the 'night-time high street,' a bounded social setting purged of heterogeneity in order to conform more fully to the expectations of its core constituency. This theme of commercially moulded social order is brought to the fore in a discussion of social control within licensed premises. The tendency to focus upon individual or limited combinations of factors in the strategic management of crime risk is eschewed in favour of an analysis of the purposive, complex and interconnected orchestration of security-related activity. By comparison, public policing of the *streets* is revealed as reactive, and increasingly reactionary, the State having compromising its role as primary guardian of public order.

The thesis goes on to identify the adversarial licensing trial as a key arena of contemporary contestation. At trial, combatants deploy a range of skills, resources and capacities in interaction and have access to a repertoire of arguments and counter-arguments. In addition to the strategic manipulation of content, effective engagement requires attention to the *form* in which evidence is delivered. These factors work to the detriment of objectors as they seek to prepare, present and defend their case. The practical success of industry players arises by dint of their success at persuasion and seasoned ability to denounce the arguments of their opponents. These interactional accomplishments are facilitated by enhanced access to financial and legal resources and combine with the threat of litigation and ideological affinities with Government to create a situation of 'regulatory capture'.

Chapter 1

Introduction: "Couldn't give a XXXX for Last Orders?"

"If you're in the business of fighting crime, then you have to be in the business of dealing with the alcohol issue"

Britain's 'violent crime tsar' - Paul Evans (Home Office Police Standards Unit, *The Observer*, 21 November 2004: 15)

"Each side musters what power it can exert to its own advantage, or at least to block the other side and force a compromise... The night group fights harder because its jobs and profits are at stake" (Melbin, 1987: 70-1).

The night-time economy (NTE) arguably poses the greatest threat to public order in Britain today. This thesis is the first study to look in detail at that most salient component of the NTE, the night-time high street. The term 'night-time high street' will be used to describe those central areas of our towns and cities in which licensed premises are most densely concentrated. A further defining feature of this environment is the proliferation of themed and branded venues operated by major corporate players. These night-time zones of consumption therefore mirror the day-time shopping environment to the extent that each high street increasingly resembles another, local idiosyncrasies having been replaced by a more standardized and homogenous range of products and services. The form of nightlife available to consumers in such areas is constituted by a range of thoroughly 'mainstream' options in relation to music, dress, social composition, atmosphere and cultural norms; it is an environment fuelled by recreational drugs, principally alcohol.

In drawing conclusions from a previous study of the NTE,[1] my colleagues and I argued that one should not fear bouncers or other inhabitants of the night-time city quite so much as the predatory forces of the market that shape that human ecology (see Hobbs et al., 2003: 11; 277). This thesis attempts to answer a number of urgent questions arising from that statement: How might market forces be said to have conspired to create such criminogenic environments? What political and economic conditions allow corporate interests to exploit the night in a manner that remains largely unchecked by regulatory constraint? What forms of social control, street life and public sociability have been fostered by the market and what impact do they have upon modes of public and private policing? How do the leisure and drinks corporations act to protect and consolidate their interests against external threats?

The following chapters chart the rise of the high street leisure market during a period of rapid political, economic and regulatory change. As urban stakeholders, Local Government, Central Government, nightlife operators, the police, local residents and consumers all have competing conceptions of night-time social order and the appropriate usage of public and private space. My narrative serves to highlight ongoing contestations within and between these various groups.

The Shifting Terrain

Since the publication of our book in March 2003, policy debate regarding the NTE has moved on and the political situation has become more heated. Much of this controversy has been stimulated by the Licensing Act (2003) (henceforth referred to as 'the Act'). During the 1997 General Election campaign the Labour Party sent unsolicited text messages to students which read: "Cldnt gve a XXXX 4 lst ordrs? Thn vte Labr on thrsday 4 extra time" This, then popular, manifesto promise translated into the policy of a new Government who saw the extension of licensing hours as an economic boost for the drinks and leisure sector who had been lobbying hard for de-regulation of their business interests. Although the Act received Royal Assent in July 2003, a lengthy process of

[1] Economic and Social Research Council (ESRC) Violence Research Programme: 'Bouncers: The Art and Economics of Intimidation' (award no. L133251050).

transition ensued and the new licensing system is not expected to be fully operable until the end of 2005, at least.

Having decided upon its course of action, the Government then had to "find a system of justification that explained exactly why it was the right and proper thing to do" (Chomsky, 1992: 127). The Department for Culture, Media and Sport (DCMS), who were responsible for drafting and implementing the Act, outlined a number of key policy aims for the legislation, including:

- The removal of "obstacles to the further development of the tourism, retail, hospitality and leisure industries";
- The "slashing" of regulatory "red tape" for businesses;
- "Relaxed trading hours" that will "provide greater choice for consumers...allowing England and Wales' NTEs to rival their European counterparts";
- The introduction of a "crucial mechanism for the regeneration of areas that need the increased investment and employment opportunities that a thriving NTE can bring" (DCMS, 2004a: 4)

As explained in Chapter 4, the Government also argued that the crime preventative advantages of removing 'fixed' closing times, together with a range of enhanced powers of enforcement, would be sufficient to ensure that this new age of 'choice and prosperity' was not marred by increases in alcohol-related disorder. One might have thought that in an era of 'evidence-based' policymaking, these opinions would have been formed on the recommendations of criminological research and the evaluation of limited trials. Instead, the *Time for Reform* White Paper (Home Office, 2000a) and subsequent official publications chose to rely upon an aged report of consultants to the drinks industry (Marsh and Fox-Kibby, 1992) which argued that extended hours would reduce binge drinking and violence around closing time (see Chapter 4). The House of Commons All-Party Parliamentary Beer Group and trade organizations such as the British Beer and Pub Association (BBPA); The Portman Group; the Association of Licensed Multiple Retailers (ALMR); the British Institute of Innkeeping (BII) and the Bar, Entertainment and Dance

Association (BEDA) appeared to be exerting strong influence over the alcohol policy agenda. Such groups had the resources to participate in politics, apply pressure, lobby and build platforms with Government.

Throughout the development of the Act, one consistent problem for Government was that no independent commentators from the academic or medical communities were prepared to endorse or confirm its assumed benefits. Indeed, as discussed in Chapter 8, scientific opinion increasingly ran contrary to the precepts of the Act (see Academy of Medical Sciences, 2004; Babor et al., 2003; Hobbs et al., 2003; Room, 2004; Warburton and Shepherd, 2004). Expert advisors warned that in order to stem the tide of social harms associated with alcohol, it would be necessary to reduce overall levels of consumption by imposing greater supply side controls:

"I had watched British drinking levels rise throughout the 1990s with increasing alarm...I was very keen to have a scientific discussion about alcohol. But the most extraordinary process evolved...It didn't matter where we pointed or how we said it, the civil servants were deaf... They were not able to be impartial. It was like being in secret service meetings. All they wanted to do was keep the drinks industry happy and excise levels stable"

(Griffith Edwards, lead author of *Alcohol and the Public Good* (Edwards et al., 1994), cited in Levy and Scott-Clark, 2004: 21-22)

In order to maintain the "necessary illusions" (Chomsky, 1989: 20) which surrounded the Act, the Government chose to suppress or discard any knowledge 'inconvenient' to their purposes (see Chapter 8). As Home Office Minister Hazel Blears candidly admitted:

"I respect the scientific view, but it wasn't for us. We needed practical measures... Alcohol is a legal product. It is a huge part of our economy. Companies are beginning to adopt a much more socially acceptable approach... If there is glass on the table and vomit on the floor, places will close down" (cited in Levy and Scott-Clark, 2004: 27).

It became clear that the Government's aim was to manage, rather than to curb, the nation's drunkenness.

In the light of their close affinities with industry, it was perhaps unsurprising that the Government intended the new local council 'licensing authorities' to have no power to control growth in the number of licensed premises. Yet, dissenters - drawn most prominently from the police and local government - pointed to ways in which expansion of the high street had, in and of itself, generated chronic public order problems. Chapter 4 describes how in 2002-3, as the Bill gradually mutated into the Act, the Government remained enshrined in the industry camp, leaving its critics out in the cold. The Act itself was to make no reference to the 'cumulative impact' of licensed premises; market intervention being the sole prerogative of Planning Departments. The issue was to resurface as a major theme of contestation as the *Guidance Issued under Section 182 of the Licensing Act 2003* (DCMS, 2004b, henceforth referred to as 'the Guidance') passed through the House of Lords. As Chapter 4 explains, calls for the Guidance to acknowledge cumulative impact had garnered broad and influential support. The Government were ultimately forced to concede the matter and a begrudgingly tentative set of provisions were inserted.

As scepticism also began to mount regarding the case for extended hours (see Chapter 4), the Government's defeat gave renewed hope and impetus to the efforts of those councils and police forces who were seeking to exercise licensing restraint. Widespread expressions of concern regarding the possible implications of the Act similarly buoyed the cause of campaigners anxious to ensure that, despite the power of the corporate bar chains, what they regarded as the destruction of residential life and public space in urban centres would no longer become a creeping inevitability. The political mood swing gathered pace in 2003 and 2004, being reflected in newspaper commentary on the issue (for example, Harrington and Halstead, 2004; Hetherington, 2003b; Kettle, 2003; Levy and Scott-Clark, 2004; McCurray, 2003; Parker, 2003) and a string of television documentaries (including a special investigation by the BBC's *Panorama* programme and a series entitled 'Drunk and Dangerous' which provided weekly visceral footage from high streets across the UK).

In politics, perception becomes reality. Debate no longer surrounded the question of whether or not the 'problems' were real and, if they were, what was to be done about them. The Government's new public stance was that the problems were real and something *had* to be done about them. As the pre-General Election campaign machine began to stir into action that 'something' emerged as a pledge to "take a stand against anti-social behaviour." This slogan formed the subtitle of a Home Office White Paper in which the Government's defeat over cumulative impact was re-packaged as a triumph for urban citizens (!) in their fight for "safer and cleaner public spaces" (Home Office, 2003a: 10). More importantly, a new target for governmental intervention had emerged: the errant consumer. The young city centre 'binge drinker' had become emblematic of so much: the decline of civility, individual responsibility and self-respect. In 2004, Steven Green, the Chief Constable of Nottinghamshire was appointed as the Association of Chief Police Officers (ACPO) spokesman on liquor licensing. Green was more forthright than his predecessors in publicly highlighting the role of the police as "mop-and-bucket" (Green, 2004) of the corporate high street. During the summer and Christmas periods of 2004, the Home Office Police Standards Unit instigated high profile policing campaigns in urban centres across England and Wales.

In January 2005, the Government's attempts to bound public debate regarding the Act were finally forced into meltdown. Criticism of the Act emerged from three prominent sources: Sir John Stevens, (then) Commissioner of the Metropolitan Police; the Royal College of Physicians; and the Government's own Home Affairs Select Committee on 'anti-social behaviour.' Soon after, internal documents revealing an apparent rift between the Home Office and the DCMS over possible criminogenic implications of the Act were leaked to the press. These events combined to form front page news and provided plentiful ammunition for opportunist political opponents of the Government, most prominently, the *Daily Mail*, who launched a campaign entitled '24-Hour Drinking: The Great Rebellion' (12 January 2005). The Government's woes were compounded in quarterly crime figures indicating a 7% rise in offences of 'violence against the person'[2]

[2] http://www.homeoffice.gov.uk/rds/pdfs05/hosb0305.pdf Home Office: England and Wales Crime Figures Quarterly Update, published 25 January 2005.

and the results of a Guardian/ICM opinion poll which showed mounting opposition to the Act (Travis, 2005). The struggle for the night had been drawn to the very epicentre of crime and disorder policy and discourse.

These factors, especially the need to appease police opinion during a sensitive political period, led to the publication of a hurriedly prepared consultation document entitled *Drinking Responsibly* (DCMS, Home Office and ODPM, 2005). The document announced a range of proposals including the designation of 'Alcohol Disorder Zones' – a 'polluter-pays' initiative – which, for the first time, proposed a *compulsory* levy on pubs and clubs to pay for extra policing in areas where a voluntary self-regulation approach had failed.[3] The political storm had been subdued, but critics saw the proposals as a timely and overdue admission by Government that the new era of licensing really would be a step in the dark. In their response to *Drinking Responsibly*, temperance pressure group the Institute of Alcohol Studies (IAS) summarized critical opinion in stating that "so far as we know, this is the first time any British government has been forced to seek advice on how to mitigate the worst effects of a piece of legislation before it has even come into force" (IAS, 2005: para 1.1).

The Genesis of a Research Project

My own biography was of key importance to the genesis of this research project. Between 1991 and 2002 I spent over 1,000 nights in paid employment as a disc jockey (DJ) playing at approximately 250 different locations, mostly in the North West and West Midlands of England. For much of this period, DJing and nightclub promoting was my chief recreation and source of income. The bright lights, intensity and glamour of the NTE were my workplace and it was a social world that was familiar and seductive to me. My long-standing interest in criminogenic aspects of the NTE was given added impetus by my involvement in the aforementioned research project. Like Armstrong who studied his home town's football hooligans: "I knew a little, but sensed that there was a lot more

[3] At the time of writing (March, 2005) it remained unclear how such schemes might be implemented without prompting recurrent litigation between operators and the police. Legal opinion in the trade press had already sought to condemn the proposals as an unworkable panic reaction to the wave of criticism directed at the Act.

to know" (1993:12). As the 'bouncer project' developed I became drawn into a stimulating research process, one which encompassed and drew upon my personal experiences and interests whilst presenting an intellectual challenge – the demystification of a particular sphere of social life.

This thesis started life as a study of night-workers. My fieldwork during 2000 focused upon issues of work-related risk within a nightlife context. This proved to be a rewarding and fruitful topic of investigation. However, I found that many of my informants had other, more pressing, concerns. By 2001, it became apparent that two issues were of particular salience for the licensed trade and gatekeeper agencies such as the police, local authorities and the NHS: firstly, the need to understand the rapid transformations in political, economic and regulatory governance that were shaping the night-time high street; and secondly, the need to conceptualise, measure, record and prevent what appeared to be an associated tide of alcohol-related violence and disorder.

Correspondingly, the dissemination of research findings from the bouncer project had begun to attract the attention of crime prevention practitioners from across the UK. Police, local authorities and leisure corporations began to approach members of the research team with requests for assistance in the form of consultancy work. My supervisor encouraged me to respond positively to these requests in order to broaden my contextual knowledge, establish valuable links with key gatekeepers and take advantage of the numerous associated fieldwork opportunities. Small-scale projects were conducted in two areas, the most significant of which involved my management of a 9-month study in the West End of London concerned with the collection of policy-relevant data (Elvins and Hadfield, 2003; Hadfield and Elvins, 2003). However, the vast majority of enquiries involved requests for me to appear as an expert witness in licensing trials.

Ethnographic engagement in the courtroom was not therefore initially sought out or planned, but rather, was something thrust upon me as the price to be paid for an otherwise unattainable quantity and quality of research access. Introductions from my consultancy clients were invaluable in helping me to gain the trust and co-operation of new informants within their own organizations and beyond. As my insight deepened, it

became increasing apparent that something very important was going on. Licensing litigation was playing a quite fundamental role in shaping not only the high street and its related crime patterns, but also the wider public life and economic development of the night-time city. Moreover, some people were getting rather upset about this. Open conflict had broken out between those sections of the drinks and leisure industry who wanted to open up the night to further development and a number of police forces, residential communities and local authorities who were seeking to adopt an increasingly restrictive stance to licensing. Feelings were running high on both sides. Local skirmishes fuelled and mirrored the broader battles occurring at a national level in the debates that raged over impending legislation widely understood to be ushering in a new era of '24-hour drinking.' The theme of conflict therefore emerged as the major focus of my research. My consultancy work provided access to key protagonists; social actors who occupied centre stage in the contestation of the night at a time of radical upheaval and transformation.

The Research Literature

Most previous sociological investigations of the NTE had been concerned with issues such as urban lifestyles and regeneration (Bianchini, 1995; Bromley et al., 2000; Comedia, 1991; Hadfield et al., 2001; Heath and Stickland, 1997; Kreitzman, 1999; Lovatt, 1996; Lovatt et al., 1994; Melbin, 1987; Montgomery, 1995; 1997; Montgomery and Owens, 1997; Moran et al., 2003; Thomas and Bromley, 2000; Worpole, 1992; 2003); club and drug cultures (Brain, 2000; Collin, 1997; Cressey, 1932; Hammersley et al., 2002; Haslam, 1999; Hollands, 2002; Jackson, 2004; Malbon, 1999; Redhead et al., 1998; Rietveld, 1993; Thornton, 1995); governance (Chatterton, 2002; Chatteron and Hollands, 2002; 2003; Hobbs et al., 2000; 2005; Valverde, 2003; Valverde and Cirak, 2003); alcohol-related violence (Bromley and Nelson, 2002; Burns, 1980; Chikritzhs and Stockwell, 2002; Dyck, 1980; Felson et al., 1997; Gofton, 1990; Graham and Wells, 2003; Hollands, 2000; Nelson et al., 2001; Tomsen, 1997; Wikström, 1995); and public and private policing (Berkley and Thayer, 2000; Calvey, 2000; Hobbs et al., 2002; Lister et al., 2000; 2001; McVeigh, 1997; Monaghan, 2002a; b; c; Wells et al., 1998; Winlow, 2001). My colleagues and I presented an overarching analysis of these themes in Hobbs

et al (2003) where we also briefly alluded to issues of contestation (pps 258-259; 269-270).

Themes of political, economic and moral conflict over urban night-time entertainment can be found in the historical analyses of Erenberg (1981); Melbin (1987); Schlör (1998) and Weightman (1992). However, the only researchers of contemporary nightlife to address issues of contestation are Chatterton and Hollands (Chatterton, 2002; Chatteron and Hollands, 2002; 2003). In his fullest exposition of the theme, Chatterton (2002: 28) identifies a number of tensions between stakeholders regarding issues such as creativity, culture, escapism, quality of life, regulation, crime and economic development. Chatterton's analysis of these conflictions is thin. Contestation is accorded secondary importance to the formation of a 'consensus'

"for how the NTE should develop which is largely based around meeting the needs of large and highly acquisitive property developers and entertainment conglomerates, profit generation and selling the city through upmarket, exclusive leisure aimed at highly mobile cash-rich groups" (ibid: 23).

Although Chatterton accurately identifies the local state, police, licensing magistrates, residents, door security firms, nightlife operators, consumers and workers as key protagonists, in identifying an emerging consensus, he fails to comprehend the depth of oppositional feeling and activity within and between such groups. Blind to the means through which the ascendancy of a pro-business entrepreneurial agenda has occurred, his analysis confuses consensus with domination. One gets no sense, for example, of the importance of licensing litigation and the way in which, in courtrooms across the UK, corporate interests are pitted against local community groups and public sector agencies; trials of strength which have far-reaching implications for the development of the NTE at a local, regional and national level. Such analytical slippages are understandable as social scientists have rarely concerned themselves with the operation of administrative technologies of governance such as licensing law (Valverde, 2003). My analysis regards consensus as closely, but problematically, linked to the notion of 'partnership' (Crawford, 1997); the salience of both concepts arising from their use as rhetoric devices in an

official discourse which serves to obscure material inequalities of power and the realities of conflicting interest and contestation. By offering an empirically-based exposition of these technologies in action, this thesis will aim to show how any superficial appearances of consensus are likely to have been bought at a price, resulting from struggles in which dissenting voices are not merely overlooked, but actively silenced and subordinated.

Any notion of consensus is further compromised by a nascent criminological literature on patterns of violent crime. Crime and disorder and crime and disorder opportunities do not occur randomly, indeed there is strong empirical evidence to suggest that they are concentrated in both space and time (Bottoms and Wiles, 2002; Brantingham and Brantingham, 1993; Felson and Clarke, 1998). In British urban centres, certain forms of violent crime, criminal damage and anti-social behaviour are typically concentrated in and around nightlife areas (Bromley and Nelson, 2002; Budd, 2003; Hobbs et al., 2003; Hope, 1985; Mirrlees-Black et al., 1998; Nelson et al., 2001; Tuck, 1989) with the majority of incidents, in general, occurring on the streets rather than within licensed premises themselves (Nelson et al., 2001; Tuck, 1989; Warburton and Shepherd, 2004).[4] Similarly, analyses of temporal patterning have shown that violent and disorderly incidents tend to peak between 23.00 and 03:00 on Friday nights/Saturday mornings and Saturday nights/Sunday mornings, the periods in which night-time pedestrian activity levels are typically at their height (Budd, 2003; Hope, 1985; Maguire and Nettleton, 2003; Nelson et al., 2001; Shepherd, 1990; Tuck, 1989).

New Directions

Building upon these background literatures, this thesis aims to explore a number of largely uncharted sociological and socio-legal terrains. This introductory segment introduces the central themes of investigation (Chapter 1), whilst Chapter 2 provides an accompanying exposition of methodology. The thesis is then presented in three sections. In Part 1 - 'Nights Past' (Chapters 3 and 4) - I trace the history of the urban night in Western cities. This is not a general history of nightlife, nor a history of alcohol

[4] This is particularly true in relation to incidents of disorder and criminal damage, see Maguire and Nettleton, (2003).

licensing,[5] but rather, a more modest and partial literature review concerned with the night-time hours as a period of release, control, economic opportunity and, ultimately contestation. Inspired by the work of a number of scholars who have noted night's liminal character (Alvarez, 1995; Bourdieu, 1977; Hobbs et al., 2000; Melbin, 1987; Williams and Bendelow, 1998), Chapter 3 describes how, the street, had, for centuries (and probably, since the very birth of the city), been a primary site of contestation. In medieval and early-industrial society, both the State and municipal authorities associated nocturnal movement with nocturnal mischief. The chapter notes how street lighting and public police forces initially emerged as expressions of feudal and State power over the night, a power which was gradually relinquished as leisure capital increased its ability to shape the trajectory of urban development and control. In mid-nineteenth century Britain, high profile contestations over the mass public entertainment/alcohol nexus were already beginning to occur in politicised and quasi-legal settings. In a bitter trade protection war mirroring the contemporary struggle between late-night operators and pub chains (see Chapter 4), London's theatre owners fought for greater regulation of their more lucrative rivals, the music halls, which, they claimed, were little more than "glorified pubs" (Weightman, 1992: 25-28; 96-97). Nightlife entrepreneurs also faced legal challenge from without, in the shape of moralists and social reformers. Part I explains that, although the moralist agenda was to be largely replaced by more objective social policy and 'quality of life' themes, it is to the Victorian city that many of today's litigious preoccupations can be traced.

Chapter 4 brings this narrative up to date by focusing upon a period of rapid politico-regulatory change in British cities between the early-1990s and implementation of the Act in 2005. Where previous studies have examined alcohol-related crime and disorder from a cultural, psychological, pharmacological or situational perspective, this chapter explores the political, commercial and regulatory shifts that serve to shape the social context of criminal opportunity.[6] More specifically, the chapter traces the evolution of

[5] The lengthy history of liquor licensing in England and Wales has been comprehensively recorded by others, notably, Kolvin (2005) and Mehigan et al. (2004).

[6] I discuss what I understand to be primary and concrete contributory factors in the generation of alcohol-related crime in Chapter 5. This analysis is expanded and developed in relation to the public space environment in Hadfield and contributors, (2005b).

the contemporary night-time high street and the ways in which its growth was facilitated by gradual and incremental processes of de-regulation. These changes corresponded with the rise of corporate branding, the atrophy and suppression of less profitable forms of nightlife, and the triumph of a largely homogenous alcohol-led entertainment model. I describe how, aided and abetted by Central (and, in some cases Local) Government, developers successfully circumvented the remnants of a decades-old regulatory system. The Chapter thereby recounts the ways in which industry players were able to colonize ever greater portions of space and time, supplying their product more efficiently to a restless nocturnal city.

In Part II (Chapters 5 and 6) I explore the demarcation of the high street as a primary context for nightlife and the ways in which forms of social control, involving both enablement and constraint, may be woven into the organization of human activity. Both chapters draw extensively upon ethnographic fieldwork and interview data to explore the peculiarly criminogenic features of these settings and the challenges created for formal and informal 'policing.' Chapter 5 looks in detail at high street premises themselves and their specificity as interaction settings. The chapter departs from previous studies by adopting a more 'holistic' understanding of the ways in which nightlife operators seek to control patron behaviour. In particular, the traditional focus upon the application of force and guile by dedicated security staff is eschewed in favour of an analysis which highlights the cooperative work of all members of staff in the constitution and maintenance of social order. These methods are often informal, conducted in the course of other diverse work tasks and may permeate every aspect of operational practice from music policy through to the design and décor of the building.

These notions of order contrast sharply with the forms of public sociability to be found in surrounding streets where formal and informal constraints are relatively weak and large intoxicated crowds converge. Chapter 6 contrasts the cultural mores of the high street with liberal ideals of 'disorderly' but democratic urban public space. The chapter goes on to explore the role of the police in managing crowd behaviour and attempting to apply normative rules of constraint within peculiar, bounded interaction settings in which such social norms are largely eschewed. The penultimate section of the chapter goes on to

explore the experiences of those who live in close proximity to the high street. The chapter concludes with a discussion of recent official responses to negative public perceptions of night-time public space. This analysis highlights the State's collusion with industry in promoting campaigns of education, policing and enforcement premised upon individualized notions of personal responsibility and the identification and blaming of errant consumers and suppliers of alcohol.

In Part III (Chapters 7-9) I explore licensing litigation, the licensing trial, and the concrete themes which form the primary foci of courtroom discourse. The court of law is the *primary* arena of contemporary contestation, for it is there that far-reaching decisions regarding the development of the night are taken. Yet, in highlighting the import of legal procedures, it is not my intention to suggest that all, or even most, contested licensing applications come before the courts. Many cases are settled out-of-court through negotiation and the striking of regulatory 'deals' (see Chapter 4). These processes are analogous to those of 'plea bargaining' in the criminal courts (see Baldwin and McConville, 1977).[7] Yet, the courtroom casts a long shadow. The *threat* of court action and its financial, personal and organizational consequences can often be a spur to agreement and concession, even if the outcome does little to assuage a party's concerns. These spurs are felt most sharply, I suggest, by local residents and public sector agencies.

I begin to develop this argument in Chapter 7 by profiling various social actors within the licensing field. Chapter 8 then identifies and dissects what I refer to as an 'argument pool,' a set of sixteen arguments and counter-arguments that are repeatedly submitted to the courts. As indicated in Part II, licensing trials, despite their import, are not the *only* sites of conflict. Broader struggles occur at the national level in political and media

[7] In such instances, those applying for licences concede a degree of prospective 'guilt' by offering to make compensatory contributions to the local crime prevention agenda. In so doing, they implicitly accept the arguments of those objectors who posit a correlation between new licensed development and the exacerbation of crime risk. As Manchester (1999: 5.12) notes, "on being notified of objections, it may be that the applicant is able and willing to accommodate them. The objections might be overcome either by agreement with the objectors or by imposition of conditions on the grant of a licence and, where conciliation results in the withdrawal of objections, the authority may then proceed to issue a licence." In such cases there is no further contest, "no testing of evidence, no calling of witnesses, and no open court trial" (Baldwin, 2000: 246), both sides are spared the significant cost of further legal fees, regulators can inform the public that they have 'done something about crime' and the applicant gets her licence.

discourse. In acknowledgement of this, Chapter 8 points to the ways in which licensing deliberations are infused by a dominant neo-liberal ideology which acts to effectively suppress and belittle alternative opinion. I illustrate this point in its most explicit form by indicating ways in which a state-industry coalition acts to control the dissemination of scientific knowledge regarding the aetiology of alcohol-related harm, thus restricting the information available to the courts to its own benefit.

Chapter 9 focuses upon the trial itself as a legal process within and through which the corporate will is exercised and challenged. Although my analysis draws extensively upon ethnographic engagement in the preparation and execution of trials, I do not attempt to provide a broad and detailed account of the licensing court as a social world. Rather, in accordance with my focus upon contestation, emphasis is placed more narrowly upon the construction and presentation of *arguments* and the social and economic context within which trials occur. By extension, I do not attempt to analyse the entire range of interactions that occur within the trial. I attend primarily to the experience of witnesses, the delivery of live oral testimony, and cross-examination.

Previous ethnographies of *criminal* procedure have tended to rely, to varying extent, upon observation of the organization and workings of the courts (Atkinson and Drew, 1979; Bottoms and McClean, 1976; Carlen, 1976; Darbyshire, 1984; Emerson, 1969; McBarnet, 1981; Rock, 1993). As Baldwin (2000: 245) notes, a serious problem facing those conducting observational research is that "open court proceedings present only the public face of justice." In equal measure, the observation of administrative trials reveals only the public face of regulation. What non-participant observers cannot see is the way in which the evidence and arguments of the parties are shaped in preparation for trial. As explained in Chapter 2, my role as a direct participant afforded access to the hidden processes through which opposing parties sought to strategically construct their own competing and malleable accounts. Chapter 9 explores the peculiar forms of strategic interaction adopted by protagonists in their efforts to present their own arguments in a favourable light, whilst, at the same time, attempting to discredit the counter-arguments of their adversaries. In the Chapter's concluding paragraphs I argue that ethnography can provide a rarely glimpsed view of differentially and asymmetrically assigned skills, resources and

capacities and the ability to intentionally deploy them in interaction. These factors, I suggest, may be understood as vital elements in the constitution and exercise of power and the subsequent production and reproduction of inequality.

In Chapter 10, I conclude by summarizing and developing the central analytical threads of each chapter. The thesis is then extended by outlining the basic contours of an alternative approach to the adjudication of licensing appeals. As a postscript, I highlight various limitations of the study and indicate the need for further research in relation to a number of emergent themes.

Before proceeding further, it is necessary to outline the regulatory framework which governs the night-time high street.

Licensed Development and the Law: A Basic Framework

The Old System

In England and Wales, the development of licensed premises has long been subject to three primary forms of municipal control: planning; public entertainment licensing; and liquor licensing. Let us assume that an operator is seeking to open a new late-night bar in a town or city centre, that the building currently has a non-leisure use (possibly a former bank or shop), and that liquor licensing is controlled by the provisions of the Licensing Act 1964 (which pertained during the course of this research and remained operative until the 'First Appointed Day' of the new licensing system (7 February 2005). The developer would initially approach the local authority Planning Department in order to obtain planning permission[8] with no adverse restrictions on terminal hours. If permission was

[8] The Town and Country Planning (Use Classes) Order 1987 (UCO) allocated standard planning classifications to a number of very broadly related land uses. Thus, category A3, for example, was applied to all premises selling food or drink for consumption on the premises or hot food for consumption off the premises, whilst a D2 classification was assigned to 'assembly and leisure' uses as diverse as 'dance-halls' and gymnasia (DoE, 1987). Introduction of the Use Class system has had a significant de-regulatory effect, as once planning permission is granted to use a property for one purpose within each designated class, a developer then assumes "the express right to use it for all other purposes in that class" (Rowley and Ravenscroft, 1999:124). As my colleagues and I described (Hobbs et al., 2003: 262-267), the UCO has had important implications for the NTE, as it has allowed cafes and restaurants to turn into alcohol-led bars and

denied, the applicant could appeal and the matter would be decided by a specially appointed Central Government Planning Inspector.

Once planning permission had been obtained, the applicant would then apply to the local authority licensing department for a Public Entertainment Licence (PEL).[9] There were no restrictions on the hours that councils or the courts could permit for a PEL, allowing, in principle, licences to cover the whole 24-hour period, 7 days a week. PEL applications were considered by local authority licensing committees at quasi-judicial hearings (see below). In the courts, PEL cases began as appeals against the denial of new licences or variations to existing licences. Appeals were brought before a District Judge in the Magistrates' Courts; both parties then having a right of appeal by way of re-hearing in the Crown Court before a judge and at least two magistrates. Having obtained planning permission and a PEL, the applicant would then need to obtain a liquor licence.

Under the Licensing Act 1964, the standard permitted hours for the sale of alcohol terminated at 11pm from Monday to Saturday and at 10.30pm on Sundays. If a bar or nightclub wished to extend those hours in order to sell alcohol after 11pm it had to obtain

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quasi-nightclubs without requiring further planning consent. This has occurred despite the fact that the environmental impact of these different types of use may be highly divergent. As Bromley et al (2000: 92) note, whilst "one type of A3 use may be beneficial to a particular street, another may not," as licensed premises vary greatly in "character and function...with obvious implications for the social characteristics of the market attracted." Such problems have long been identified in research and consultation exercises (Baker Associates, 2001; Central Westminster Police/Community Consultative Group, 1998; Delafons, 1996; ODPM, 2002).

On 21April 2005 the UCO was amended. Class A3 now covers restaurants and cafés (use for the sale of food and drink for consumption on the premises); a new Class A4 covers drinking establishments (use as a public house or wine bar etc.); and Class A5 refers to hot food take-aways (use for the sale of hot food for consumption off the premises). Previously, all of these uses fell within Class A3, allowing premises to change into one of the other uses without planning permission. This is no longer the case. Planning applications for these uses must now specify the intended operation and consent is given appropriate to the relevant use class. These changes make it difficult to reconcile hybrid uses (i.e. emphasis on food during the day and drink at night - now a mix of A3 and A4 classes), as historically a mix of land uses has created a 'sui generis' use falling outside the land classification order. The term 'nightclub' has no formal classification; therefore planning permission is required in all cases where a building is to be converted into a nightclub, although clearly entertainment/dance-led venues still fall within Class D2 (Assembly and Leisure).

[9] PELs were required for all businesses offering 'music and dancing or other entertainment of a like kind' to the public (an exemption was made for private members' clubs). The licences were administered by local authorities on an annual renewal basis. In order to obtain a PEL, premises had to meet certain standards with regard to issues such as fire risk, air conditioning, air-filter changes and door staff. The operating conditions attached to PELs might typically refer to terminal trading hours, capacity limits and the control of noise emissions.

a Section 77 Special Hours Certificate (SHC). The SHC effectively replaced the normal permitted hours [10] allowing alcohol sales up until a statutory limit of 2am (3am in Central London). In order to obtain a liquor licence or SHC one had to apply to the local licensing justices. Before granting a SHC the justices had to be satisfied that a PEL was in place[11] and that the sale of alcohol was to be ancillary to music and dancing and/or substantial refreshment (food). Thus, under the 1964 Act, it was, strictly speaking, illegal to sell alcohol after the end of normal permitted hours (except on special occasions or as a hotel guest) unless drinking was ancillary to some other activity, normally eating or dancing. Contested liquor applications were heard at the Magistrates' Court following objections from the police and/or local residents and businesses. Aggrieved parties could exercise their right of appeal to the Crown Courts where a trial would be conducted in front of a judge and a panel of magistrates.

The New System

The licensing process described above has been radically transformed by the Act. Key provisions of the new system include:

- Replacement of statutorily 'fixed' permitted hours with a system in which the times of sale are agreed for each set of premises individually. This creates the *potential* for up to 24 hour opening, seven days a week;

[10] The Court of Appeal case of Shipley (R v Stafford Crown Court, ex p. Shipley [1998] 2 A11 ER 465, 162 JP 429, CA (1998) Licensing Review) made it clear that special hours were not simply hours which commenced at 11pm and were 'bolted on' to ordinary permitted hours. As the Justices' Clerks' Society (1999: para 6.19) note, "Shipley made it clear that on those days and in those places were a special hours certificate was in force, the ordinary permitted hours are replaced by special hours...there would be no permitted hours before the specified commencement time" of the SHC. The SHC therefore conferred *substitute*, rather than additional hours for the sale of liquor (Phillips 2002: para 6.90 (3) and applied to the entire trading period.

[11] Industry commentators often pointed out that, as s77 of the Licensing Act 1964 permitted post-11pm drinking in pubs and clubs only where a PEL was in place, the law created a strange anomaly whereby one was obliged to "make a noise" in order to serve late drinks. This, it was suggested, militated against the development of a more leisurely and relaxed post-11pm drinking environment of appeal to a more mature clientele. The requirements of s77 were therefore cited as one of the reasons why the late-night economy remained dominated by the young and boisterous (see Hadfield and contributors, 2005b).

- The transfer of licensing powers from magistrates to 'licensing authorities' comprised of a committee of local councillors; local government therefore gains jurisdiction over all three primary forms of municipal control, allowing them to "offer a comprehensive one-stop-shop on the range of regulatory requirements" (Haskins, 1998: 216).

- Justices' liquor licences to be replaced by two new licences - the premises licence (pertaining to the venue) and the personal licence (held by qualified individuals);

- A single scheme for premises which sell alcohol; offer public entertainment, or provide late-night refreshment. This brings together a number of previously distinct licensing regimes;

- The introduction of operating schedules in which applicants outline how their premises are to be run. These documents contain information such as proposed hours of trading, capacity limits and crime prevention arrangements;

- The planning system remains as a distinct regulatory mechanism;

- Licensing authorities are required to promote four licensing objectives: the prevention of crime and disorder; public safety; prevention of public nuisance and the protection of children from harm;

- The licensing authority must issue a 'Statement of Licensing Policy' which sets out how it intends to exercise its licensing functions and promote the licensing objectives. Licensing authorities are compelled to have regard to the Guidance (DCMS, 2004b) in formulating these statements. The Guidance is framed in such a way as to allow for variations and different interpretations. Each application has to be considered on its individual merits.

- The licensing authority *must* grant all premises licence applications unless an objection is received from the police, local residents or one of the other statutorily

defined 'interested parties' or 'responsible authorities.' If an objection is received, a hearing must be held in which both sides present their views in front of a panel of at least three committee members. The licensing authority is not permitted to raise its own objections and must act fairly and judicially in reaching a decision;

- Conditions may be attached to the premises licence which balance the operator's requirements against the concerns of objectors;

- Under the review procedure, a range of sanctions can be employed against premises licences where complaints are made. These can involve the imposition of new conditions right through to revocation of the licence.

- The licensing authority cannot fix the hours of sale and in the absence of objections, must grant the hours requested. The Guidance rejects the curtailment of hours as a mechanism for preventing crime and disorder and endorses restriction only on the grounds of public nuisance in residential areas. The Guidance recommends the limiting of hours as an action of last resort, appropriate only where, having heard both sides of the argument, the licensing authority deems the imposition of conditions to be inadequate (Op cit: para 6.8);

- The licensing authority can adopt a Special Saturation Policy (SSP) where there are concerns regarding 'cumulative impact' in a particular area. In drawing up an SSP, the authority must have regard to the Guidance and cannot include provision for a fixed terminal hour. The licensing authority cannot apply its SSP unless and until an objection is received, either from local residents or from one of the responsible authorities. A premises licence cannot be denied unless a representation to such effect is received. When objections are received, the SSP then creates a presumption against the grant, however, each application must be judged on merit and this presumption may be overturned if the applicant can successfully argue that the premises will not add to the cumulative impact already experienced;

- If an applicant is dissatisfied with the decision of the licensing authority they have a right of appeal to the Magistrates' Court. The appeal is a re-hearing of the licensing authority's decision and is adjudicated by a panel of licensing justices. There is, however, no further right of appeal to the Crown Court as had been enjoyed under the old liquor and public entertainment licensing legislation. Both parties may appeal to the Administrative Court on a point of law (see below).

'What the Public Interest Requires...'

One seemingly universal feature of trial settings is that proceedings are conducted in accordance with sets of rules and regulations which control the content and form of testimony, thereby serving to delimit interaction. Many previous studies of the courts have focused upon the social practices of the criminal law (see for example, Carlen, 1976; Ellison, 2001; Emerson, 1969; Linton, 1965; McBarnet, 1981; Rock, 1993). The procedural rules of the English administrational trials in which I participated differed in a number of ways from those of the Anglo-American criminal law (the systems which have formed the focus for previous courtroom ethnographers). Before proceeding further, it is necessary to briefly highlight some of the most important points of departure.

When determining licensing matters, all bodies, including local authority licensing committees, Magistrates' Courts and Crown Courts, perform an administrative function. This role "...does not involve deciding between the rights or interests of particular persons. It is the exercise of a power delegated by the people as a whole to decide what the public interest requires."[12] Administrative decision-makers are required to act quasi-judicially, which involves, at a minimum, deciding each case on its merits, taking into account all relevant considerations and observing basic tenets of fairness (see Manchester, 1999: 5.18). Most trials and tribunals are governed by rules of procedure which stipulate the approved means for introducing evidence, ruling on admissibility, examining witnesses, and so on. In criminal and civil trials, rules of evidence are used to

[12] Regina (Alconbury Developments Ltd and others) v Secretary of State for the Environment, Transport and the Regions [2003] 2 AC 295, para 74, per Lord Hoffman.

control the content of the testimony that maybe introduced. In determining licence applications, administrative decision-makers enjoy broader discretion in governing the conduct of hearings[13] and they do not apply strict rules of evidence.[14] Although an adversarial approach is adopted and each party calls evidence in support of their case, 'hearsay' evidence is admissible[15] and there is no burden of proof. This means that no party has anything to 'prove' - it is up to the committee / justices/ judge to decide disputed issues on the 'balance of probabilities,' based upon the persuasiveness of the evidence they have heard.[16]

All bodies that exercise administrative functions are required to observe the usual tenets of administrative behaviour[17] and their judgements are subject to supervisory inspection by the Administrative (High) Court. Two appeal mechanisms are available to aggrieved parties: appeal by way of case-stated and Judicial Review. Appeal by way of case-stated

[13] The general discretion of justices is discussed in Brown (1991); Darbyshire, (1984) and McBarnet (1981). Darbyshire (1984), in particular, notes the important role of the Justices' Clerk in training the magistracy and advising them on issues of law, practice and procedure. The Clerks' influential role in licensing matters will become apparent in Chapter 4's discussion of the *Good Practice Guide: Licensing* (Justices' Clerks' Society, 1999).

[14] In the Magistrates' Courts, there were, for example, no strict rules as to the timetable for disclosure of documentary evidence and witness statements. These matters were often simply agreed between the parties in advance of the trial.

[15] Under the 'hearsay rule,' a statement, whether of fact or opinion, is not normally admissible as evidence where it is made otherwise than by a person giving oral testimony in court. Similarly, persons cannot give evidence as to what they heard another person say about an event; they can only give evidence as to their own experience or knowledge. Evidential statements are classified as inadmissible hearsay when the object of the evidence is to establish the *truth* of what is contained in the statement. Hearsay statements are often considered to be unreliable because they are 1.) not submitted on oath; 2.) not able to be challenged by cross-examination, and 3.) afford the bench no opportunities to observe the demeanour of the witness at the time the statement is made. Although evidence is not excluded in administrative hearings solely on the grounds that it is hearsay, judicial suspicion of hearsay evidence remains and benches are often inclined to attach less weight to evidence that has not been tested in their presence. Hearsay evidence such as petitions and market research surveys are generally regarded as admissible, although many benches insist that they be supported by witnesses who can be questioned as to the manner in which such evidence was prepared (see Phillips, 2002: para 2.55). Despite this, the extent to which the conditions of a live oral trial can and do serve to effectively expose unreliable evidence and perjury remains open to question (see Choo, 1996: chp 2; Ekman, 1985; Ellison, 2001; Wellborn, 1991).

[16] In criminal cases the prosecution bears the burden of proof and the standard of proof is higher, being that of 'beyond reasonable doubt.'

[17] These include the avoidance of bias and perverse actions; adherence to the rules of natural justice (see Chapter 9); the 'Wednesbury rules'; the requirement to take account of material considerations; the maxim of 'legitimate expectation,' and the duty to give reasons (see Leyland and Woods, 2002; Wade and Forsyth, 2004). All of these are administrative law concepts and they form the usual grounds for challenging the decisions of administrative bodies.

is brought where the challenge is based upon an allegation that the licensing body's decision was wrong in law, in excess of jurisdiction, or reached upon an inadequate factual basis. Judicial review is an appeal mechanism which scrutinizes the *processes* through which the licensing body reached its decision. In Judicial Review, the High Court will consider whether the public body acted reasonably and proportionately in accordance within its powers (*intra vires*), correctly following procedures; or whether it in some way abused or acted outside of its powers (*ultra vires*) (see Ranatunga, 2005; Leyland and Woods, 2002; Manchester, 1999: para 8.01).

Chapter 2

Methodology

My own biography, the diffuse nature of the research topic and the access opportunities I had been afforded influenced my decision to adopt an ethnographic methodology inspired by the social anthropological and ecological traditions of the Chicago School and symbolic interactionism (see Downes and Rock, 2003: Chap 3; 7; Lindner, 1996). Such approaches are informed by a pragmatist epistemology and employ participant observation - the characteristic methodology of symbolic interactionism – wherein the sociologist places his or her self at the heart of the research setting. The researcher seeks to experience and record events as they unfold whilst focusing upon interpretation of the meanings and understandings of social actors as generated through interaction with their environment. Formal deductive reasoning and *a priori* speculations are largely eschewed, with valid knowledge held to be attainable only through the direct experience of social phenomena. Inferences and hypotheses remain tentative, being posited *only* as they emerge *from the data*, to be repeatedly adapted and refined via an evolving process of analytic induction (see Becker, 1958; Humphreys, 1970; Znaniecki, 1934). With knowledge grounded primarily in the researcher's *personal* engagement with the enacted environment, ontological claims are necessarily modest, cautious and context-bound (Rock, 1979). Generalization is eschewed in favour of the detailed analysis of process and action within distinct social settings (see for example, Becker, 1963; Fielding, 1981; Hobbs, 1988; Humphreys, 1970, Rock, 1993).

I also employed an interactionist approach when exploring the conditions of action that served to shape process and action. As C. Wright Mills (1970) notes, in order to understand discrete microsociological settings one must look beyond the immediacies of the enacted environment and "study them in such a way as to understand the interplay of milieux with structure" (p246). This thesis therefore combines description of social

interaction with contextualizing macrosociological analyses of regulation, political economy and the propagation of knowledge and discourse.

Shadowing the Night People

My fieldwork focused upon three primary social settings: licensed premises located in central urban areas; public space in and around the night-time high street; and licensing trials. These settings were, by nature, open to the public and therefore presented no formal barriers to access. Access to the more private and confidential domain of pre-trial meetings and correspondence, barristers' chambers, police stations and the offices of local authorities and business executives arose in accordance with the requirements of my various sponsors. My sampling of research sites was similarly externally task-oriented, although opportunities invariably arose to pursue my own emergent lines of enquiry. Access to informants was mostly directed by the snowballing of personal introductions with no pretence to statistical representation. In licensed premises, I conducted interviews with licensees, managers, bar staff, disc jockeys, lighting jockeys, door staff and promoters. I accompanied police officers on public order patrol (in vehicles and on foot) in 7 towns and cities: Hereford, Liverpool, London, Macclesfield, Newcastle, Preston, Southport and Worthing and accompanied local authority licensing inspectors in London. Interviews, focus group discussions and more informal 'conversations with a purpose' were conducted with front-line police officers and city centre residents in towns and cities throughout the UK. Higher status stakeholders engaged in contestation at the strategic and political level were also approached, including leisure industry executives; police managers; representatives from alcohol pressure groups and trade organizations, local counsellors and local authority officers. I also authored two chapters of an edited collection on crime control in the NTE alongside specialist contributors from the police, the trade, local authorities and the legal profession (Hadfield and contributors, 2005a; 2005b) and provided consultancy services for the City of Westminster on an ad hoc basis in relation to my knowledge of the research literature.

Interviews were conducted around a series of emergent themes with open-ended questions phrased in such a way as to encourage narrative testimony. Formally arranged

interviews were recorded by Dictaphone, although, in many instances, contemporaneous recording proved impractical or inappropriate. In some field situations, particularly working environments, interviews were frequently disrupted and recording devices tended to disrupt the flow of conversation and / or elicit more guarded responses. In such circumstances I had to rely upon memory. My method was to make notes at the earliest possible opportunity. On consultancy visits to licensed premises, for example, this might often involve retiring to toilet cubicles. By recording events and snippets of conversation while they were still fresh in my mind I hoped to retain validity. Although the fieldnotes recorded in this way were not accurate, word for word, I believe they remained accurate in tone. In order to protect the identity of informants and to honour assurances of confidentiality, references to specific places and people were removed during transcription.

Courting Controversy

I appeared as an expert witness in licensing trials on 26 occasions and attended a further 10 trials simply to observe. The trials were conducted in Magistrates' Courts and Crown Courts throughout England.[18] As explained below, my participation in trial-related consultancy occurred in three ways: pre-trial briefings; preparation of my witness statement; and the presentation of oral testimony.

I would initially be approached and commissioned by a client's solicitors. I would then begin to correspond with counsel and other legal professionals in the course of case preparation. My first task would be to examine bundles of documents containing witness statements and other relevant information such as previous judgements, architectural plans, promotional material, radius maps, crime statistics and letters of correspondence. I would be required to examine these documents in detail and provide counsel with my response in the form of confidential briefing notes. In most cases, this task required me to critique the reports and statements submitted by our opponents. Counsel would use these notes as an aid to the preparation of witness cross-examination. On many occasions, my presence would be requested for briefing meetings with counsel and case conferences

[18] I did not participate in High Court appeal trials as they did not involve full re-hearings of the evidence.

attended by other witnesses. At these events team strategies for the fighting of each case would be formulated.

My key task was to research and prepare a written witness statement (described by lawyers as a 'proof of evidence report') for each trial. Very little of this trial-related work was conducted in the region in which I live (North East England), therefore the research for each case would typically involve one or two weekends away from home in order to visit the town or city in question. It would be necessary for me to visit the relevant site and its surrounding area on a Thursday, Friday or Saturday night in order to observe activities during the relevant periods of time. In the case of new licence applications from branded chain operators I was also required to spend one or more evenings in an existing 'unit.' This would require the planning of further weekends in other areas. In the case of licence variation applications for existing premises (typically in relation to extensions of the terminal hour or increases in capacity) I would simply visit the premises in question and its surrounding area.

In the course of my visits to over 50 licensed premises and their environs over a three-year period, I developed a systematic observation schedule to assist in the recording of detailed field notes. My 'checklist' of key issues to be explored on each visit included features of both the operation of licensed premises and activities in public space indicated by the research literature and by my own experience to be associated with crime and disorder and other forms of environmental stress. In relation to the premises themselves this would include issues such as the concept of the business, availability of food, levels of comfort, customer occupancy levels, age, social profile and intoxication level of patrons, behaviour of bar and door staff and drinks pricing policies. Issues recorded in surrounding public space included number, density, size and terminal hours of premises, availability of transport, location of taxi ranks and fast food outlets, direction and density of traffic and pedestrian flows, noise levels, general profile and demeanour of the crowds, policing strategies, incidents of littering and street fouling, and an assessment of street lighting and CCTV coverage.

Events were recorded in chronological order as each night progressed. In order to appear unobtrusive, for personal safety reasons, and most importantly, simply to make the task less tedious, I employed friends to assist me. The evenings would begin at around 7-8pm usually with attempts to buy a meal, and run through until around 3.30am the following morning (or as late as 5am in Central London) when the streets began to clear and the night's festivities finally came to an end. In a few cases, where an area was new to me, I was accompanied by police officers or local authority licensing inspectors. Officers would sometimes be in uniform and on other occasions would wear plain clothes. These 'authority figures' would answer my questions and impart local knowledge whilst showing me the 'circuit,' the key hot spots and all the major venues.

Time on the streets and in licensed premises undoubtedly exceeded that spent within the licensing courts, permitting considerable opportunity for observation and engagement in a wide variety of settings. Yet, unlike Hobbs (1988) who was able to combine research in the pub with pleasurable socializing, I often found fieldwork in licensed premises and night-time public space to be hard, tiring and frustrating. I was away from home, amongst strangers and tasked with the detailed recording of almost everything I witnessed; accounts that might later be tested in a court of law. Drinking (very much) was therefore not an option I could realistically explore. Indeed, spending almost every weekend evening in this environment impacted adversely on my social life and was a source of worry for my family. Despite the drawbacks, my nocturnal movements remained something of an adventure. They provided an exciting element of regress to my pre-academic self, a "holiday from academic rituals...an opportunity to get away from books, papers, essays, seminars and sedentary pontificating on the ills of the world" (Punch, 1978: 325).

In court, my primary roles were to submit verbal evidence under oath and to then present myself for cross-examination. My evidence was usually of central importance to a client's case as I was often the only independent witness to have direct experience of the premises and general environment. I was also required to pay close attention to the evidence and cross-examination of other witnesses, particularly those of our opponents. On occasion, I would be asked to sit next to, or directly behind, counsel in order to avail

myself for whispered questioning and to assist in passing notes or comments in relation to unfolding events.

As a fully-fledged participant my experience of the courtroom was quite different to that of non-participant observers such as Bottoms and McLean, who recall their experiences of the criminal trial as "dull, commonplace, ordinary, and after a while downright tedious" (Bottoms and McLean, 1976: 226 cited in Baldwin, 2000: 245). By contrast, my experience developed into one of excitement, nervous trepidation, intense concentration and personal challenge (see below). Periods of tedium did occur, but these involved time spent in court corridors and canteens waiting for delayed cases to begin. Control over my own use of time had to be subordinated to the dictates of the court and the strategies adopted by counsel. The majority of cases proceeded slowly and at a pace dictated only by court insiders and other legal professionals (see Rock, 1993). In their anxiousness to appear fair, magistrates and judges were often loath to dictate the pace of events. Laborious and repetitive submissions and questioning were used tactically in order to restrict opportunities for participation by time-pressured witnesses. As a temporal deterrent, counsel would give precedence to the needs of busy professional witnesses such as police officers and hospital consultants when scheduling the presentation of their own party's evidence. Such witnesses had to arrange time away from work in order to attend, and their co-operation and good will had to be preserved. As a specially-appointed consultant, counsel would expect me to adopt a more flexible approach to time, placing other commitments on hold. If my evidence had to wait until the following morning, so be it. Trials could therefore involve significant periods away from home, sometimes for as long as five consecutive nights. These nights were typically spent in hostels and the soulless rooms of the more basic hotel chains. Yet I fulfilled counsel's expectations with good humour as they enabled me to 'earn as I learned' (Saunders, 1997), observing every twist and turn of events.

My field roles were strategically adapted to the requirements of each setting. In some instances, for example when observing licensed premises for the purposes of a pre-trial report, my role had to be covert in order to avoid provoking actions by the researched that may have disrupted the naturalism of the setting. Like Humphreys (1970), in my covert

roles, I attempted to participate as a 'legitimate' and therefore unobtrusive observer. On other occasions, for example when conducting interviews with the staff of licensed premises or police officers, my role was overt and my purposes made explicit. My role as an expert witness to the licensing courts was more ambiguous. I told my clients that I was conducting a study of the regulation of nightlife and made no secret of my interest in the social practices of litigation and courtroom interaction. What I did not do was to specifically inform anyone that I intended to write about such matters. To have done so would, I felt, have unduly compromised and complicated my field relationships and activities, undermining the validity of my data. Although my purposes in recording and analysing associated data were not fully explained, the trials themselves were public events and, like others engaged in copious note-taking (including legal professionals and journalists) my intentions might reasonably have been inferred.

My analyses of the licensing trial are undoubtedly partial as I have sought to rely upon note-taking and informal interview methods employed in the course of my own participation. My evolving and inductive approach to analysis involved the coding of data into categories based upon my interpretations of social interaction *in situ* and may paint a different picture from that elicited by other methods such as formal retrospective interviewing. More fundamentally, the validity of my data must, like all sociological research, remain open to question. I cannot know what impact my presence had upon the naturalism of the settings or how typical or atypical the views and behaviour of my (opportunity) sample were. I will never know if, or to what extent, informants sort to purposely adapt their actions and interactions in my presence. Ethnographers (and sociologists in general) have always trod an epistemological minefield; I was no exception.

My personal biography had a major impact upon the character and quality of fieldwork interactions and relationships. I am a white male from the North West of England, my social class of origin is the 'petite bourgeoisie'[19] and my age during the research period was early-mid 30s. Of course, researchers are not merely passive observers or scribes, but active participants in the research process (Van Maanen, Manning and Miller, 1989). This

[19] Petite bourgeoisie: a group of ambivalent status, who tend to share the economic privileges of the middle classes, but are culturally and socially more akin to the respectable working classes than to middle class professionals, bureaucrats or administrators (see Savage et al., (1992).

is an issue of practical epistemological concern (Miller and Glassner, 1997). In the interview context, for example, "the story is being told to a particular person; it might take a different form if someone else were the listener" (Riessman, 1993:11). My DJ and promotions experience assisted me in establishing rapport with workers in licensed premises as it allowed me to empathise with their stories and respond appropriately. I found my age to be an asset when conducting field work as I was still young enough to mingle unobtrusively with the late-night crowds, yet also had sufficient experience and credentials to be taken seriously as an expert witness. My value to the court stemmed, in part, from my ability to get 'close to the action.' I often felt like a colonial anthropologist, tasked with interpreting and reporting upon the behaviour and rituals of the (ignoble) savage. Licensing trials were dominated by white male upper-middle class legal professionals. For me, issues of reflexivity therefore revolved around issues of 'class work' much more so than around issues of race or gender. This was because, with few exceptions, black and ethnic minorities were simply absent from the courtroom, whilst women tended to play supporting, rather than key, roles.[20]

Learning the Trade

The first time I gave evidence was at the Crown Court in Leeds in 2001. I had rarely set foot in a court of law and my naivety made me easy meat for counsel who took some delight in misconstruing my words and exposing my 'incompetence.' My experiences matched those described by Shuy (1993: 201) who warns that:

"Expert witnesses who submit to examination and cross-examination should expect to be treated in ways quite unfamiliar to what they are used to in an academic setting. For

[20] I did not encounter any female applicants, nor did I encounter applicants from black and ethnic minorities. Only two female expert witnesses were observed, although women comprised approximately half of all lay witnesses, the vast majority being objectors together with a small number of supporters of the application (see Chapter 7). In the cases in which I participated, I encountered a fairly high proportion of female District Judges and magistrates in the magistrates' courts. The proportion of female judges in the crown courts was much lower, although a number of benches did include female magistrates. Only once did I encounter a female advocate and only once a black male advocate. Although I did not systematically record social profile data, my general observations matched those of Pannick, (1987: 53-59) who notes the generally narrow social constitution of the legal profession and the preponderance of white, middle-aged and upper-middle class men.

example, they can expect ridicule of various types. They can expect to be submitted to the temptation to get angry. They can expect loaded questions...The expert witness is in a language game and must be alert at all times for traps..."

As requests for court work began to mount, I resolved to 'get my act together' in order that such humiliations might be avoided. In attending trial and spending time with lawyers, business executives and crime prevention practitioners, I found it necessary to adapt my usual comportment in order to construct a more appropriate professional persona. In the absence of formal training, I learned how a witness was expected to behave through "the more indirect means of observation and imitation" (Becker, 1963: 48). I listened attentively to the cross-examination of other witnesses and the way in which testimony was received. I overheard the conversations of lawyers as they passed judgement on witnesses' performance and asked each counsel I worked with for an assessment of my strengths and weaknesses. In becoming accustomed to courtroom mores, I learned to manage my fear and adopt the necessary emotional fortitude.

Competent performance involved, at a minimum, the ability to translate verbal and written testimony into 'evidence' - a mode of discourse understandable and useful to courtroom actors. As is often the case with the dissemination of social research to lay audiences, submitting evidence required "simplification that renders a complex world in blacks and whites" (D. Walker, 2001: 1; and see Shuy, 1993: 201). My 'view from below' had to be stated clearly, in a form that was largely stripped of academic jargon. I also had to acquire presentational skills. I learned to dress appropriately. My normal casual and somewhat creased attire was replaced by a black or navy blue suit, shiny shoes, a crisp and well-pressed shirt and bright, but sober, silk tie. I learned the formal decorum of the courts and how to interact in an appropriate manner. As with my field work in licensed premises and on the streets, much of my court work was conducted many miles from home. In the South East of England I found myself attempting to neutralize my Northern accent by adopting my own mutant variety of 'Received Pronunciation.' As well as learning how to talk, I also had to learn when to keep my mouth shut. Within the courtroom, conversation amongst observers was always strictly prohibited, and even in the 'backstage' arena of the corridor, restaurant or briefing room,

unnecessary chat was often unwelcome. Lawyers had to concentrate and continually re-organize their case and nervous witnesses had to be briefed.

Most importantly, I had to learn how to present and defend my report. With experience I became more cautious, robust, even tempered and assertive. Once confident enough to resist counsels' attempts to cut short or misconstrue my words, I began to use my new speech opportunities to display the breadth and depth of my knowledge; draw upon supportive evidence from other witnesses and to launch my own 'counter-attacks.' Like Becker's (1963) marihuana users, I found that once these basic lessons of performance had been learnt, my affective interpretation of the task was dramatically transformed. Trials acquired a new and more positive meaning, becoming exciting and challenging struggles rather than humiliating ordeals: "what was once frightening and distasteful becomes, after a taste for it is built up, pleasant, desired, and sought after" (Becker, ibid: 56). Of course, the experience of delivering oral testimony remained stressful, but I now had a feeling of preparedness, a fine-tuned sense of danger and the ability to take appropriate remedial action. The scales of interaction were no longer so lop-sided; I had learned to play the game.

Having published work which firmly apportioned much of the blame for alcohol-related violence at the feet of the leisure chains I was, and was known to be, sympathetic to objection arguments. It could be argued that these preconceptions prevented me from conducting objective, and therefore 'good' social science.[21] However, in recent decades there has been a growing recognition of the inescapably normative and political dimensions of the social research process.[22] It would have been difficult, if not impossible, for me to accept work from a client who wished me to support expanded licensed development in the face of well-researched police opposition. Although, in cross-examination, opposing counsel continually sought to question my integrity, it would have only been in accepting such a commission that more forceful issues of

[21] This view is commonly associated with positivism and also with Weber (1949), who argued that social research should and could be value-free.

[22] Influential proponents of this view have included Gouldner (1962), Becker (1967), Bell and Newby (1977), and from a feminist perspective, Mies (1983) and Finch (1984).

professional ethics may have arisen. In actuality, although the adversarial system encouraged both sides to somewhat overstate their case (see Chapter 8), the evidence presented by applicants often did offend my own understandings of the truth. In such circumstances, it was not possible to remain dispassionate. As a fully integrated team member, I had invested time and effort into each case and successful outcomes gave rise to considerable personal satisfaction. My reluctantly accepted access opportunity had become a sought-after game of strategy; a battle of wills.

Part I

Nights Past

Chapter 3

The Uses of Darkness

"The best prophet of the future is the past" Lord Byron

The Work of Fang and Claw: Contesting the 'Natural' Night

"Deep night, dark night, the silent of the night, the time of night when Troy was set on fire, the time when screech-owls cry and ban-dogs howl and spirits walk and ghosts break up their graves" William Shakespeare *Henry VI, Part 2, Act 1, Scene 4.*

It's 2.30am on a warm, wet morning in late August and I'm driving home from work through the largely deserted streets of Cheshire towns and villages- in the headlights of oncoming cars I see something that looks like a ball stuck to the bonnet of my car. As I look more closely, to my amazement, I see the ball moving – a large snail with horns fully extended is moving effortlessly across the bonnet despite the fact that I'm driving at over 50 miles per hour. The snail stays on for the full 20 mile journey and as I park the vehicle my path is blocked by other creatures: two toads and a large earthworm. I stop the car and carefully remove the creatures placing them in the warm moist grass of the garden. I like these creatures. They are, more so than we can ever be, 'of the night.' We fear them because we cannot see them – they represent fear of the rural night, the wilderness, the primeval night, a night without lights, of unseen eyes which see us even though and we don't see them and eerie, mysterious sounds: the howl of the wolf, the screeching cry of the barn owl, the soft patter of bats in flight.

The physiological limitations of the human senses have fuelled our fear of the night and the creatures that populate it. Starved of vision, our principal sense, human imagination and culture has filled the gloom, void and shadow our eyes cannot penetrate. Penny (1993) argues that humanity's fear of the dark arises, in part, in relation to feelings of vulnerability in comparison with the ability of nocturnal animals to move freely and

precisely in darkness. Often these animals have sensory abilities far beyond the capabilities of humans. As Urry (2000: 388) notes, in the "sensuous geography" of Rodaway (1994) for example: "each sense contributes to people's orientation in space; to their awareness of spatial relationships; and to the appreciation of the qualities of particular micro- and macro-spatial environments." Loss of vision equates with loss of control. What cannot be seen cannot easily be avoided, ordered or understood and may therefore elicit conjecture and superstition. Throughout history, nocturnal animals have been feared and persecuted, with tales of horror casting them as icons of evil. Following Douglas, one sees the biblical texts of Leviticus and Deuteronomy classify certain animals as abominable by dint of their failure to "conform fully to their class...or whose class itself confounds the general scheme of the world" (1966: 56). Interestingly, the biblical list of animals "not to be eaten" includes many nocturnal species including the owl and the bat (Lev 11: 13-19). Animals identified by scripture as unclean tended to be those whose physical features, capacities or behaviours render them in some way anomalous. Douglas finds similar interpretation in the treatment of persons of indefinable status who, in many societies, may be ascribed as deviant, rendering them susceptible to accusations of witchcraft and sorcery (ibid: Chp. 6; Palmer, 2000). As Muchembled (1985: 85-6) notes of witchcraft in medieval France, women abroad at night were "charged with the morbidity of the hour." Both the night and its occupants were cast as Other.

"The newer a culture is the more it fears nightfall" (Schivelsbusch, 1995: 81).

Throughout much of human history, nightfall has brought a period of mysterious recess to which people ascribe "forces very different from those that rule the day. In the symbols and myths of most cultures, night is chaos, the realm of dreams, teeming with ghosts and demons as the oceans teem with fish and sea monsters...it holds both repose and terror" (Schivelbusch, ibid). The night is feared as much (and in most of the contemporary world, undoubtedly more), for the darker deeds of humanity than the "work of fang and claw" (Milne and Milne, 1956: 7). Yet, the archaic association of darkness with mystery, defilement and evil remains, filling the pages of Western theology and literature (Boyd, 2001; DeLamotte, 1990; Link, 1995; Palmer, 2000) from Shakespeare through to Shelley,

Stoker, Dickens[23] and Joyce and continues as an instantly recognisable motif for poets, film makers[24] and musicians.

The Uses of Darkness

"Yeah, I only smoke weed when I need to, and I need to get some rest yeah, no sex.
I confess, I burned a hole in the mattress, yes, yes, it was me, I plead gill-tee.
And at the count of three, I pull back the duvet, make my way to the refrigerata.
One dried potata inside, no lie, not even bread, jam; when the light above my head went bam!

I can't sleep, something's all over me, greasy insomnia please release me and let me dream about making mad love on the heath, tearing off tights with my teeth.
But there's no relief. I'm wide awake in my kitchen, it's dark and I'm lonely.
Oh, if I could only get some sleep! Creaky noises make my skin creep.
I need to get some sleep. I can't get no sleep."

Rap written and performed by Maxi Jazz on the 1995 club anthem 'Insomnia' by Faithless (Cheeky Records: BMG/Champion Music)

Historian A. Roger Ekirch's (2001) extensive studies of the social life of night in pre-industrial Europe (approximately 1500 to the 1830s) reveals that only the wealthiest people, for the most part, could afford candles:

"Nights were dark, and accidents were extraordinarily common. People fell into ditches, ponds and rivers and off bridges; they were thrown by horses unfamiliar with dark paths. Accidents were especially common when alcohol was involved, and people were most inclined to drink at night" (Ekirch, quoted in Wolkomir and Wolkomir, 2001: 40).

[23] The novels and journalism of Dickens are replete with images of the Nineteenth Century London night, see for example, Dickens (1934; 1977; 1996).

[24] In addition to the most obvious examples of the horror genre and film noir, consider the salience of the night-time cityscape in mainstream cinematic classics such as Martin Scorsese's *Taxi Driver* or the archaic and quasi-religious motifs of light and darkness employed in the film adaptations of Tolkien's *Lord of the Rings*.

Moreover, "to be out at night was to court danger, for night was often a time to settle scores" (Palmer, 2000: 32). Notions of the night as a time of surreptitious sexual activity, deviant cultural innovation and crime, underlined suspicion of those who populated the darkness, with the innocent pedestrian of the day magically recast as night prowler (Alvarez, 1995: 254-255; Aubert and White, 1959). Before the advent of effective artificial lighting, the concealing darkness provided ample opportunity for crime (see Ekirch, Op cit: 370: O'Dea, 1958: 94-5), generating fear and stringent precautionary action. People "prepared for bed as if girding for an impending siege. 'Barricaded,' 'bolted,' and 'barred... backside and foreside, top and bottom" (Ekirch, Op cit: 353; Muchembled, Op cit: 25-6). In densely built urban areas, fire was an even greater peril than crime due to the combination of naked flames from hearth and candle and the combustibility of building materials (Ekirch, ibid). O'Dea (Op cit: 94) describes how, in sixteenth-century Paris, the population were terrorized by "bands of incendiaries who set fire to houses to pillage them and their fleeing inhabitants."

Yet, as well as being a time of danger and vulnerability, the night was also, on occasion, a time of revelry and celebration. Public holidays and religious festivals might involve the lighting of great bonfires. Festivals of light were features of the religious calendar from midnight mass to the pagan rituals of midsummer solstice (Alvarez, 1995). On some nights, pagan and Christian traditions intertwined. The night before All Saints' Day known as Halloween, was said to provide "the final opportunity for unplacated spirits to run about on errands of mischief" (Milne and Milne, Op cit: 5). Now highly commercialized and largely shorn of its religious significance, Halloween continues to fire the imagination of children, whilst serving to temporally legitimize otherwise unacceptable acts (see Jeffries, 2004):

Case Note: Teenage Nights

In contemporary Northern England, young teenagers in the suburbs sometimes use the fall of darkness for pranks and 'hauntings.' Spaces such as neighbours gardens that are guarded by adults and thus 'out of bounds' in daylight become open to youthful

appropriation once the curtains are drawn and the adult world withdraws for a night in front of the television. When darkness falls the street is used as a meeting place, the phone box, grit box and bus shelter take on new meanings as sites of sociability and conflict, territories that can be claimed, fought over and marked with graffiti. Sometimes the teenage night-world meets the adult one. One Halloween custom allows the recess of the adult night to be shattered by a confident knock on the door. In 'trick or treat,' a deviant form of play which can border on intimidation, horrific costumes are worn and options dictated. To treat is normative, to rebuff is defiant- *a dare* which can invite mischievous retribution. An egg attack on the windows, acts of vandalism, nocturnal noises, practical jokes with sometimes unnerving or sinister overtones- the leaving of animal bones on the doorstep. Trick or treat can get out of hand, especially in rural areas where tricksters work under cover of darkness and don't always offer the option to treat.

Figure 1: A young woman twirls burning 'poi sticks' at a woodland gathering, summer 2004.

Other, relatively innocuous activities such as camping and night-fishing still offer excitement for lovers of the 'natural night,' adults and children alike. Young adult groups

may create their own alternative and surreptitious forms of nightlife which subvert commercial values: free and relatively spontaneous parties in urban (warehouses, motorway service stations, housing blocks etc.) and rural (beaches, caves, woods etc) locations, or more intimate fireside gatherings in the wilderness.

These activities can be understood as attempts to recapture something of the nights we have lost. Up until the nineteenth-century the night was still regarded in most areas as anomalous, a different "season" (Ekirch, quoted in Wolkomir and Wolkomir Op cit.) in which there lurked danger, opportunities for transgression (Burke, 1941; Cresswell, 1999; Jacobs, 1992; Palmer, 2000), a rest from toil, and an often uneasy sleep (Ekirch, 2001).

Night in the Medieval City

"Compared to Paris, the darkest and loneliest forest is a safe retreat." (Boileau, cited in Schivelbusch, 1995: 84)

Although the medieval city afforded its citizens some sense of protection against the unseen terrors of the rural night, peoples' activities after dark remained restricted by both fear and official sanction (Burke, 1941). The question of who controlled and used the night, and who knew better than to use it, was of great salience. Ruler and citizen and rich and poor alike were vulnerable in sleep and demanded protection of their property and persons. Schivelbusch (Op cit: 81) describes how:

"Each evening, the medieval community prepared itself for dark like a ship's crew preparing to face a storm. At sunset, people began a retreat indoors, locking and bolting everything behind them. First the city gates, which had been opened at sunrise, were closed. The same thing happened in individual houses. They were locked and often the city authorities took the keys for safekeeping overnight."

In medieval France, as in England:

"The cities slept early...In the streets there were few if any passers-by and almost never were there fixed lights; nothing could be seen but an occasional torch leading the hesitant steps of the few who ventured out" (Muchembled, Op cit: 25).

Throughout much of medieval Europe, after-dark activity in urban areas was suppressed by the hours of curfew[25] from sunset to sunrise, within which, "night closed officially upon the community" (Salusbury-Jones, 1938: 197). Curfew was enforced by armed, torch-bearing 'watch' patrols.[26] In England, enactments of 1252 and 1285 decreed that "six men were to be stationed at each city gate, twelve men were to guard each borough, and smaller groups were to be summoned according to the size of the population" (Langmead, cited in Salusbury-Jones, 1938:135). These regulations were intended to prevent all contact with the world beyond city walls whilst also suppressing nocturnal movements within. For men, serving on the watch was a mandatory civic duty and considered by many, an onerous one. In larger towns and cities, the watch was assembled at ward-level by constables and beadles who had the power to select and summon its constituents and fine absentees (ibid.). Whilst some watchmen kept static guard at key entrances, junctions and vantage points, others formed into armed and torch-led foot patrols, apprehending and questioning persons found beyond doors.

The medieval curfew can be understood as a very stringent mechanism of order-maintenance, premised upon the maxim of 'the less movement, the less mischief' a principle embodied in the wording of numerous local prohibitions against 'night-walking.' Burke describes how, in England, most people observed the curfew because it was "in harmony with their own habits" of "early to bed, early to rise." This meant that "in summer...town as well as country was up and doing at five in the morning; in winter

[25] The word 'curfew' derives from the Norman-French 'covre-le-feu', 'douse the fire' Alvarez (1995: 14). Curfews periods were often announced by the sounding of a bell. The time at which curfews came into force varied for different areas and seasons. For example, "In summer time in London, it was sometimes allowable to walk abroad until ten o'clock, but this was the latest hour ever permitted" (Salusbury-Jones, 1938: 139). By the 18th century, English watchmen performed a number of civic functions. In addition to the suppression of crime and insurgency, the watch might be involved in "crying the hour after the chimes, taking precautions for the prevention of fire, proclaiming tidings of foul or fair weather, and awakening at daybreak all those intending to set out on a journey" (Sidney, 1892: 17, cited in Schivelbusch Op cit, 88). A bell might sound again at daybreak to signal dispersal of the watch (ibid: 167).

[26] Watch patrols were often the forerunners of the public police (see Emsley, 1996).

at seven" (1941: 1-2; O'Dea, 1958: Chp 1). Citizens were required to provide strong justification for their nocturnal errands in order to avoid fines or incarceration. In London, a statute of Edward I (1272-1307) read:

"None be so hardy as to be found going or wandering the streets of the City after curfew tolled at St. Martins-le-Grand, with sword or buckler, or other arms for doing mischief, or whereof evil suspicion might arrive, nor in any other manner, unless he is a great man, or other lawful person of good repute, or their certain passengers having their warrants to go from one to another, with lanthorn in hand" (quoted in O'Dea, 1958; 94).

Similarly, a Parisian decree of 1380 required that "At night, all houses...are to be locked and the keys deposited with the magistrate. Nobody may then enter or leave a house unless he can give the magistrate a good reason for doing so" (Schivelbusch, Op cit: 81). A Leicester ordinance of 1467 stated that "no man walke after IX of the belle be streken in the nyght withoute lyght or withoute cause resonable in payne of impresonment" (Salusbury-Jones, Op cit:139). Those who bore arms and/or did not identify themselves by carrying a light were regarded with particular suspicion and might be subject to immediate arrest and imprisonment, "like someone without papers" (Schivelsbusch, 1995: 82; Alvarez, 1995: 17). In some cities, torch-bearing 'linksmen' were employed as escorts-for-hire to guide officially-sanctioned travellers through the streets (Bellan, 1971; O'Dea, Op cit).

Yet, in the larger cities such as London and Paris the curfew was often difficult to enforce and night-time streets and other "places of public concourse" remained the domain of "evilly disposed persons" (O'Dea, Op cit: 94). This criminogenic night of the medieval and early-modern city is depicted in a famous engraving by William Hogarth entitled *Night*. Hogarth shows the anarchic environment of a gloomy London street replete with illicit fires, night watchmen, prostitutes, lurching drunks and the emptying of a chamber pot from a bedroom window (see Hogarth, 1973). Crimes committed at night were generally judged more harshly than similar offences during daylight hours (Muchembled, Op cit: 117) and suspects risked arrest from unanticipated raids (Aubert and White, Op cit). The cloak of darkness and respite therefore presented danger as well as opportunity

for the criminal. Arrestees were held in a prison or at an inn until the morning when they were brought before a mayor or bailiff (Salusbury-Jones, Op cit: 140).

The Imposition of Light

"...lanterns showed who lit the streets and who ruled them" (Schivelsbusch, Op cit: 87).

In *Disenchanted Night* (1995), Schivelsbusch traces the development of public lighting in European cities and its intimate relationship with State power and police attempts to impose order on the urban night. Schivelsbusch argues that from as early as the sixteenth-century, it was recognized that permanent public lighting could play a vital role in the suppression of disorder and political dissent by ensuring that processes of on-street surveillance and identification were reciprocal: in order to maintain the desired 'balance of power,' both police and the citizenry should see and be seen.[27]

Muchembled (Op cit: 25) describes how in fifteenth-century Burgundy, citizens were ordered to place a torch before the door of every house before night-time visits by the duke. Whilst in sixteenth-century Paris, every house was required to identify itself by displaying lantern light (Schivelsbusch, Op cit: 82). As Schivelsbusch notes, such regulations were intended to render the streets more navigable after dark, thus imposing structure and order on the night-time city. Yet, "this was not yet street lighting, but simply an extension of the old duty to carry a torch after dark" (ibid). More comprehensive illumination, consisting of lanterns attached to cables strung across the street, was introduced by royal decree in 1667 (ibid: 86). In London, public street lighting in the form of oil lamps was not introduced until 1736, here again the core rationale for illumination was the suppression of crime and disorder (Alvarez, 1995; 18; Melbin, 1987: 12; O'Dea, Op cit: 97). Although spatially restricted to the main thoroughfares and most densely populated streets, the early Parisian street lighting fell under police jurisdiction, becoming the subject of "minute, arbitrary and draconian" decree (ibid). Thus, although

[27] The manipulation of light and darkness as technologies of concealment and surprise are discussed extensively by both Schivelsbusch and O'Dea (Op cit: 74-75).

ostensibly of benefit to all, the new light was regarded as an imposition which exposed citizens to the panoptic gaze of the police and their spies.

Schivelbusch explains in considerable detail how, in the tense pre-revolutionary context of late-eighteenth-century Paris, the new street lanterns attracted hostility and resentment. Street lighting was a governmental technology which represented the power of a despised absolutist regime. The political sensitivity of street illumination explains, at least in part, the popularity of 'lantern smashing' during this period and the severity of punishment such acts inspired:

" ...the darkness that prevailed after the light had gone out stood for disorder and freedom...Every attack on a street lantern was a small act of rebellion against the order it embodied...destroying lanterns was not treated as (merely) disorderly conduct but as a criminal offence not far short of lese-majesty" (ibid: 98).

In the early weeks of the 1789 Revolution, lantern-fixtures were used as gallows from which officials of the *ancien regime* were strung, whilst in the July Revolution of 1830, the rebels used the darkness imposed by their wholesale destruction of street lanterns to assist their guerrilla war against royal troops (ibid: 100-106). As Schivelbusch notes, such "revolutionary acts reversed the order that absolutism had imposed on the street 150 years earlier" (ibid: 106).

The Development of Public Nightlife

Night-time leisure had long been regarded as an indicator of social privilege and conspicuous consumption (Alvarez, 1995; Burke, 1941; O'Dea, 1958) betokening the lifestyle of the upper and 'dangerous' (criminal) classes, people who might take to their beds at a time when the day, for workers, was just beginning. As Burke (Op cit: 5) notes, in medieval England there was "no public amusement at night: no public play, dance, concert, assembly, or illuminated garden. These things came later..." When officially sanctioned night-time entertainment did take place, it was usually only in the great houses of the noble and wealthy.

Schivelbusch locates the origins of public night-time leisure in the cities of Eighteenth Century Europe which, in addition to benefiting from advances in the technology of light, were experiencing great social and political change. Up until the late-eighteenth century there had been little significant improvement in lighting technology for over a millennium (O'Dea, Op cit). As Melbin (1987) argues, spread of the new gas and then electric lighting and the increasing social acceptability of nocturnal wakefulness, permitted Western society to colonize the hours of darkness in a way which resembled its settlement of the globe. Yet, in parallel with exploration of the land frontier, the spread of artificial light and socio-economic activity beyond (and within) the central loci of political and economic power was slow and uneven (O'Dea, Op cit). Even in the world's greatest cities, it was not until the mid-nineteenth century that a commercialized urban nightlife truly began to flourish (Alvarez, Op cit; Burke, 1941; Ekirch, Op cit; Melbin, Op cit; O'Dea, Op cit; Weightman, Op cit).

As Giddens (1984: 119) notes, "the invention of powerful, regularized modes of artificial lighting...dramatically expanded the potentialities of interaction settings in night hours" and began to displace a sense of time grounded in natural rhythms of the diurnal cycle. Over time, ancient traditions of the celebratory bonfire were supplemented by festive illuminations. In late-eighteenth-early-nineteenth century pleasure gardens such as London's Vauxhall, outdoor illuminations and firework displays lit up the night sky before crowds of awestruck spectators. Nineteenth century towns and cities featured a growing array of entertainment for the bourgeois and worker alike, ranging from masquerades and assemblies to theatre, opera, music halls, brothels, gin shops and nighthouses [28] (Burke, 1941; Ekirch, 2001; Schlör, 1998; Weightman, 1992). The night was increasing regarded as a time of commerce, entertainment and escape from the dark, squalid and dreary living conditions endured by much of the urban population. Compared to the working class home, even the gin shop was a "palace" of warmth and glitter (Weightman, 1992: 12-13).

[28] The name given to all-night taverns.

The Uses of Light

In his book *Nights in the Big City* (1998), a cultural history of the night in Paris, Berlin and London from 1840-1930, Joachim Schlör traces the struggle between two images that spring to mind when one contemplates the night-time city:

"...on the one hand the nocturnal city as celebration, as the place of pleasure and entertainment and on the other the nocturnal city as the place of terror, of threatening danger...Both images present nocturnal reality, but they awaken totally different feelings: temptation, desire and fascination on the one hand; intimidation, fear and terror on the other (p.10)."

In 1840, Schlör writes, the night was still seen as "a time of retreat...from the street to the house, a time for sleep, rest and regeneration – and also a time for ghost stories" (p.21). Yet, opportunities for a more active night-life were rapidly developing as population growth and new industrial technologies began to render the remnants of centuries-old curfew systems archaic. With darkness partially conquered by artificial lighting, night-time activities outside the home became increasingly bound up with notions of social, economic and technological progress. Participation in new, specifically *urban*, night-time activities became a mark of modernity and social mobility. Yet, as Schlör reminds us, not all the 'ghosts' were vanquished by more effective street lighting: "in the years after 1880, the debate about the danger, insecurity and immorality of the nocturnal city gained in intensity...New themes emerge: the criminal underworld, prostitution, the closing time for taverns, bars and restaurants" (pp. 86-88).

In England and Wales these concerns were to inform legislation governing "public dancing, music or other entertainment of the like kind" (Disorderly Houses Act 1751: s2). This Act required places of entertainment to be licensed,[29] whilst the Sunday Observance

[29] Alcohol licensing in England and Wales has a much longer history, dating back to the Fifteenth Century. Readers wishing to explore this history are referred to core texts on the subject (Mehigan and Philips, 2003; Webb and Webb, 1903; Wilson, 1940). Recent work by Kolvin (2005) is also particularly thorough and enlightening. The struggles which raged between temperance campaigners and the drinks' industry throughout much of the Nineteenth Century receive masterful analysis in the work of Brain Harrison (1967; 1973; 1994), whilst Nicholas Dorn (1983; Chp 2) assesses the impact of those struggles upon the Britain's

Act 1780 made the 'sale' of entertainment (charging admission fees) unlawful on Sundays (see Manchester, 1999: Chps. 1; 10). Licensing became a tool of control exercised by the magistracy in their role as keepers of the peace, "simultaneously representative of Central Government and the focus of local power" (Moir, 1969: 210). Licensing's prominence as a tool of urban governance increased greatly with the rise of the industrial city in the eighteenth and nineteenth centuries. The title of 'licensing authority' became consonant with that of the "guardians of order" (Valverde, op cit.: 238) wherever threats were perceived in the nocturnal leisure pursuits of the newly urbanised working classes (Vogler, 1991).

Whilst the police and magistracy attempted to (re)impose the security and order of a 'sleeping city' by restricting the trading hours of night-time businesses and imposing codes of public behaviour, various religious philanthropists, temperance campaigners and other moral entrepreneurs struggled to defend a "nightly threatened morality" (Schlör, Op cit:15; Weightman, 1992). Many of those who opposed nightlife were, Schlör argues, anti-urban reactionaries who sought to combat the 'moral degeneracy' they found in the city by evoking ancient anxieties and superstitions in which the night was cast as a "realm of constantly threatening danger" (p.144).

An urban night associated with the loosening of restraints regarding leisure, pleasure and sexuality, could, especially for women, be experienced as a hazardous and fearful environment of public sexual harassment requiring the development of precautionary strategies of avoidance and self-regulation (Stanko, 1997; Valentine, 1989). As Walkowitz (1992) argues in her study of late-Victorian London, women were forced to confront and negotiate powerfully restraining narratives of sexual danger in order to assert their presence within the heterogeneous public spaces of the city. The increasing participation of women in urban public nightlife during the late-nineteenth century can be understood as part of a wider democratization of the night (Erenberg, 1981). The

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political economy. My colleagues and I have described the development of alcohol licensing and the regulation of nightlife during the early-Nineteenth to late-Twentieth Century with particular reference to Manchester (Hobbs et al., 2003: Chaps. 2-3) and I shall not seek to rehearse these narratives here.

primeval fear of the night was beginning to lose its potency. The new urban industrial elite and the workers themselves, demanded freedom of movement to incorporate an ever greater portion of the night-time hours within the temporal rhythms of social and economic life (see Marx, 1976: 367-374; Melbin, Op cit: 14-15; Palmer, Op cit: Chp 7; Rosenzweig, 1983: Chp 2). Following the abolition of watch patrols, night walkers and revellers were now able to leave their homes without having to provide account of themselves. Yet, those who sought to open up the night-time hours for work and play, continued to experience the security measures of the authorities as restrictive. Schlör describes how confrontation mounted in the mid-nineteenth century as European cities entered an era of rapid social and technological change:

"Different views about how the hours of the night are best to be organized and fitted into the daily routine almost inevitably come into conflict. Public struggles break out between those who see the night as a closed-off time of retreat and those who want to open it up for life - for pleasure and work; a fight develops between the representatives of a strict nocturnal order and those who question it" (p.21).

As Burke (1941: 94-5) notes, in certain districts of early-Nineteenth Century London, watchmen were instructed by the churchwardens of the parish to stand on street corners holding placards bearing the legend "Beware Bad Houses." These boards, which were intended to protect 'respectable' people from unwanted encounter with the environs of disreputable taverns, also "had the effect of a free advertisement" (ibid) which attracted revellers to such areas. Tavern goers expressed their own ethos in popular song:

"We're jovial, happy and gay, boys!
We rise with the moon, which is surely full soon,
Sing with the owl, our tutelar fowl,
Laugh and joke at your go-to-bed folk
Never think but what we shall drink,
Never care but on what we shall fare-
Turning the night into day, boys!"

(ibid)

As Melbin notes, with increasing urbanization and technological progress, the growth of round-the-clock activity became a key issue of contestation with regulatory struggles breaking out between those who, for personal pleasure or economic reasons, promoted incessancy, and those who wished to conserve a period of nightly respite in the interests of crime prevention or the enjoyment of a peaceful night's sleep (ibid: 68-71).[30] The "night-timers" began to "learn that a large, drowsy population wants them to keep their noise down" and "interest groups form to argue over whose rights will prevail" (ibid: 8; 69-71).

In 1857, open-air dancing at Chelsea's Cremorne Gardens was "...indicted as a nuisance because of the hullabaloo that went on after midnight, the shouting and singing, and disputing of cab fares, and sometimes fights. There was much controversy for and against closing the Gardens at eleven o'clock, but the summons, when heard, was dismissed" (Burke, 1941: 111). *Punch* magazine argued in favour of later hours, claiming that "respectable people...would not be in the Gardens after midnight, and should not be prevented from enjoying an evening there because of the behaviour at later hours of a rowdy few" (ibid). Burke describes how, now that the practice of "turning the night into day" had spread amongst all social classes: "those who made it their business to cater for it saw that the more it spread, the more money for them" (ibid). Metropolitan nightlife had become big business. As Weightman notes with regard to the rapid development of London's theatreland:

"What distinguished London in the Victorian and Edwardian periods was not so much a genius for *creating* new forms of entertainment, nor artistic inspiration, but the fact that it was a huge market place. It was the sheer size of its audience, with their growing spending power and increased leisure time that gave rise to new forms of commercial showbusiness. For those who got the formula right, huge profits could be made out of amusing Londoners" (1992: 6).

[30] These pressures toward incessancy have of course continued to mount over the decades with the development of a vast array of new technologies permitting global business transaction and travel and communication across continents and time bands (see Kreitzman, 1999; Moore-Ede, 1993).

Graham's observations of "Saturday midnight at Piccadilly Circus" and the café bars and nightclubs of Soho during the 1920s are reminiscent of even the contemporary scene, with the key exception that, by 1.30am, "all life is emptied of the place" (1929: 199). Yet, nightlife *was* expanding temporally as well as spatially. Entrepreneurs sought to extend to extend their business activities into the night for the same reasons that people strove to conquer new lands and migrate geographically- "to exploit the region for economic gain" (Melbin, Op cit: 15). As Melbin points out, "production takes time, consumption takes time...The chance to exploit facilities that are left idle...arouses our initiative to use more of the night. Using the same space more of the time is a way to multiply its capacity" and improve returns on one's investment (ibid: 4; Palmer Op cit). In Berlin, from the 1870s onwards, police demands for strict closing times were opposed not only by the entertainment industry, but also by the "(left-) liberal-inclined city council" (Schlör, op cit: 78) who regarded the dark interpretations of the night propagated by the police as an out-dated irrelevance, impeding the city's development as a tourist destination and a "yardstick of modernity and progress" (ibid: 108).[31]

In late-Nineteenth Century England there was a big extension in the number of theatres, music halls and public dance-halls, especially in larger towns and cities. Music halls and variety theatres were regarded as more proletarian and disreputable than the theatre due to the unsophisticated and populist nature of the acts, the comparatively lower social standing of audiences and the greater availability of alcohol. Indeed, "music halls began as extensions to public houses and the sale of drink remained the mainstay of their profits" (Stedman Jones, 1983: 204). In an extensive and rambling volume entitled *Nights in Town: A London Autobiography*, the Edwardian commentator Thomas Burke (1915) provides a fascinating account of the music halls and the vivacious entertainment to be found within them.

As Weightman (Op cit: 13; 49) notes, during the Victorian and Edwardian eras, running a 'respectable' establishment "had a great deal to do with drink." Although temperance

[31] Here the recent tensions between police forces and local authorities in British cities offer a striking parallel (see Chapter 4; Hobbs et al., 2003: Chapter 3).

campaigners and other moralists called for suppression of the halls, their rising popularity could not be halted and between 1850 and 1900 their number increased dramatically.[32] Stedman Jones (Op cit: 198) notes how the "popularity of music hall songs extolling the pleasures of drink and lampooning teetotalism was a general indication of antipathy towards the temperance cause."

In the 1890s, the nightlife of London's Leicester Square became the subject of particular contestation around issues of public morality. Weightman (1992: 78) describes how the battle over the *Empire Theatre* and its alleged preoccupation with "sex, drink, prostitutes, popular taste and the profits of show business," was emblematic of the moral struggles of the Victorian era and beyond. The *Empire* had opened as a theatre in 1884, but by 1887 had begun to offer variety shows, becoming a popular gathering place. Male customers, it was claimed, were purchasing alcohol, watching sexually stimulating shows on the stage and being solicited by prostitutes who worked in and around the theatre's bars and promenade. Debate regarding the enforced closure of the *Empire* raged in the pages of the *Daily Telegraph* with pronouncements by vice campaigner, Mrs Ormiston Chant of the Social Purity League, being countered by the critic Clement Scott who famously labelled the protesters 'Prudes on the Prowl' (Burke, 1941: 130). Mrs Chant gave evidence to the Music Halls and Theatres Committee of the London County Council (LCC) in objection to the *Empire*'s application for renewal of its licence. The LCC decided to renew the theatre's licence on condition that a screen was erected between the promenade and the back row of seating, and that no alcohol was to be served in the auditorium. Weightman (Op cit: 84) quotes a press report of November 1894 which describes how the theatre re-opened with temporary screen in place, only for it to be ripped down by members of the audience.

In some instances, objectors and entrepreneurs were able to reach a compromise. By the early-Twentieth Century, a mixture of commercial pressure, stringent regulation, shifts in public sensibility and criticism from reformers had led to a gradual sanitization and

[32] Rosenzweig (1983) describes similar struggles over working class leisure in late-Nineteenth and early-Twentieth Century America, particularly in relation to drinking in 'saloons,' the American equivalent of the tavern.

gentrification of the musical hall repertoire (see Burke, 1915: 52; Stedman Jones, Op cit: 233-4; Weightman, Op cit).[33]

Schlör and Weightman's accounts of the flourishing of public nightlife and commercialized leisure in the capital cities of Europe during the late-nineteenth to early-twentieth centuries are mirrored in Erenberg's (1981) descriptions of New York and Rosenzweig's (1983) study of Worcester Massachusetts during the same period. Each of the four authors', in many ways, very different texts, traces an 'opening up' of the night in which popular recreation is linked to the formation of a new and progressive urban lifestyle and culture. The rise of after-dark entertainment is regarded as constitutive of a gradual dissolution of rigid Victorian restraints and the heralding of a new age of public informality and relatively greater intermingling of the sexes,[34] classes, and different ethnic and racial groups. All four historians imply that a new and diverse NTE was providing hitherto inaccessible outlets for self-expression and excitement, driven by the commercial appropriation of working class traditions of lively public sociability.

This democratization of nightlife began to nurture a vibrant public social life and a form of cosmopolitan urban culture quite distinct from that of more peripheral areas in which the full opportunities of the night had yet to be exploited. It is interesting to note that, in Britain, this urban culture continued to flourish despite stringent controls on the availability of alcohol imposed during the First Word War (see Shadwell, 1923) and within the context of early-twentieth century austerity which saw alcohol consumption plummet in comparison with earlier and later periods (see Weir, 1984).

Discussion

This is where my brief examination of earlier and archaic forms of nightlife must end. The purpose of this chapter has been to introduce the theme of the night as an arena of

[33] Chatterton and Hollands (2003) identify similar processes at work in the contemporary leisure market.

[34] Night-time alcohol-based entertainment and its links to gendered notions of respectability and safety have continued to restrain opportunities for female participation. For example, as recently as the 1970s, it would often be deemed socially unacceptable in Britain for 'unaccompanied' women to drink in pubs (Hey, 1986; Rogers, 1988).

contestation and to explore this topic in relation to the cultural history of Western Cities. As my analysis develops through subsequent chapters, I hope to show how this history might be apposite in informing our understanding of contemporary contestations of the night; it will become apparent that history has much to teach us about the origins and significance of our own public and regulatory discourse.

In their most hidebound manifestations, the tensions and conflicts of interest which exist between those who wish to claim the night-time hours for escapism and unfettered commerce, and those who would set the night aside as a time of tranquillity and order, remain intractable. Schlör's work in particular echoes in the multifarious shifts in regulation, public sentiment and technology that continue to shape the urban night, both materially and imaginatively. As Schlör notes, "It isn't a matter of deciding who is right. What is much more interesting is the fact that the same phenomena, at the same time, in the same city, can be perceived in such different ways" (p. 19). As I hope to show in what follows, his identification of the street as the primary site of contestation is particularly edifying:

"Control of the city is in particular control of the street, because it is here rather than in the more easily supervised indoor spaces that the threat of disorder is greatest. What can be pressed into a rigid order there, the police fear, may break free and 'pour out' onto the street" (p.33).

It is to the streets of contemporary Britain that we now turn.

Chapter 4

Paradise Lost: The Rise of the Night-time High Street

"...with the passing of the frontier, the bright-light areas or 'jungles' of the city become the *locus* of excitement and new experience" (Burgess, 1932: xiii).

"Publicans, concerned to find sites that would attract the greatest number of passers-by, favoured street corners, railways stations, horse tram and bus termini, park entrances and any spot that attracted pleasure seekers" (Weightman, 1992: 16).

This chapter presents a history of the present. It recounts how the Act was preceded and anticipated by a decade of political and regulatory change. More specifically, it is a story of the commercial exploitation of the night via the rise of the high street leisure market. The chapter therefore sets the scene for Part II, which explores how these changes have served to shape the night-time city as an enacted environment.

Local Politics, Regeneration and the '24-hour City'

In the previous chapter it was noted that urban citizens have long experienced and imagined the city at night as a particular kind of social situation in which they experience 'time out' from their daily lives. For some, especially the young, these nightlife activities may involve voluntary risk taking in relation to the consumption of alcohol and other intoxicants (Leigh, 1999; Plant and Plant, 1992) and in relation to sexual and social behaviour. As Lovatt (1996: 162) notes:

"The night-time is a time in which the world of work is seen to lose its hold. A time for and of transgression, a time for spending, a time for trying to be something the daytime may not let you be, a time for meeting people you shouldn't, for doing things your

parents told you not to, that your children are too young to understand. This is now being promoted as vibrancy."

During the mid-late 1990s, many municipal authorities in Britain had political ambitions to create the '24-hour city'; an urban core populated by residents, workers and visitors around the clock (Bianchini and Schwengel, 1991; Heath and Stickland, 1997; Jones et al., 1999). Such initiatives focused upon "bringing new dynamism to streets ...previously deserted after 5 pm" (Heath, 1997:193). This was to be achieved by "extending the 'business day' and integrating it with an expanded evening and night-time economy" (Thomas and Bromley, 2000: 1404) thereby stretching the 'vitality and viability' (DoE, 1996)[35] of central urban areas across a longer time-span. Drawing upon established planning principles of compact (Rogers, 1997) and mixed use (Coupland, 1997) development, it was envisaged that urban centres would be transformed into 'organic/holistic' locations for work, shopping, leisure and residence (Kreitzman, 1999; O'Connor and Wynne, 1996).[36] These were ambitious and romantic visions of the future in which British cities had shed their dour industrial legacies to be re-born as 'Europeans'; relaxed, sophisticated and cosmopolitan. The NTE was regarded as the driver of this civic renewal; streets were to be brought to life by large numbers of visitors, or, more specifically, *consumers*.

Public Safety via Animation

Drawing upon the concept of 'natural surveillance,' councillors, planners, architects and academics argued that the '24-hour city' would not only be livelier and more prosperous, but also safer and more welcoming due to the creation of a diverse and inclusive mix of after-dark activity (see Lovatt et al., 1994). Cultural development experts such as Montgomery (1995) and Worpole (1992) followed Jacobs in arguing that "a well-used street is apt to be a safe street, a deserted street is apt to be unsafe" (1961: 44). Public

[35] As Ravenscroft (2000:2534) notes, these interrelated concepts are central to Government planning policy guidance. The concept of 'vitality,' refers to activity within urban centres at various times and locations, whilst 'viability' relates to the commercial life of an area and its ability to attract investment.

[36] Such policies were in accordance with land use planning guidance issued by the Department of the Environment (1996) which urged local authorities to promote a mixture of retail, leisure and residential usage in urban centres.

spaces populated around the clock were predicted to be safer due to the greater number of "eyes upon the street" (ibid: 45) allowing urban centres to police themselves to some degree. This 'increased safety through animation' approach received official endorsement by the Department of the Environment (DoE and Welsh Office, 1994; DoE, 1996). The DoE circular *Planning Out Crime* stated that:

"One of the main reasons people give for shunning town centres at night is fear about their security and safety: one of the main reasons for that fear is the fact that there are very few people about. Breaking that vicious circle is a key to bringing life back to town centres...adopting planning policies that encourage a wide and varied range of uses...may well extend, for instance, to enabling arrangements that help promote the night economy" (DoE and Welsh Office, 1994: 14).

The temporal restrictions placed upon the sale of alcohol by the Licensing Act 1964 proved an obstacle to these localized attempts to create or recapture the 'living street'[37] over a longer time-span. The importance of licensed trade investment (Jones, 1996) prompted many civic entrepreneurs to identify this legislation, together with certain aspects of local regulatory practice, as a hindrance to the development of successful urban spaces (see Leeds City Council, 1995). Montgomery (1997: 98) describes how in a report to Manchester City Council of 1992, his consultancy company, *Urban Cultures Ltd*, recommended a revision of the City's licensing policy with a presumption "in favour of longer opening hours, more late licences and pavement seating." In accordance with this recommendation, a letter was sent by the Leader of the Council to all existing licence holders in the city centre, encouraging them to apply for pavement licences and late-night extensions to their PEL and liquor licences. As Montgomery notes, in Manchester, "from late-1992 onwards, the softening of attitudes towards licensing, which was already in train, gathered momentum" (ibid: 99). The linkage of economic re-generation with crime prevention had created what appeared to be a virtuous circle. Developers were welcomed with open arms:

[37] See http://www.livingstreets.org.uk

"In 1995, I was based in Reading where there were just a few pubs, old men and nasty gangs of youths in the town centre. Many post offices, banks and building societies had closed down. Then *Bass* came offering to spend £3m to £4m knocking three empty buildings into one to create a new *O'Neill's*. We were delighted"

(Simon Quin, chairman of the Association of Town Centre Management, cited in Levy and Scott-Clark, 2004: 17-19).

The new era of de-regulation dawned contemporaneously with rapid transitions in the leisure market.

(Cattle) Market Opportunities: The March of the Brands

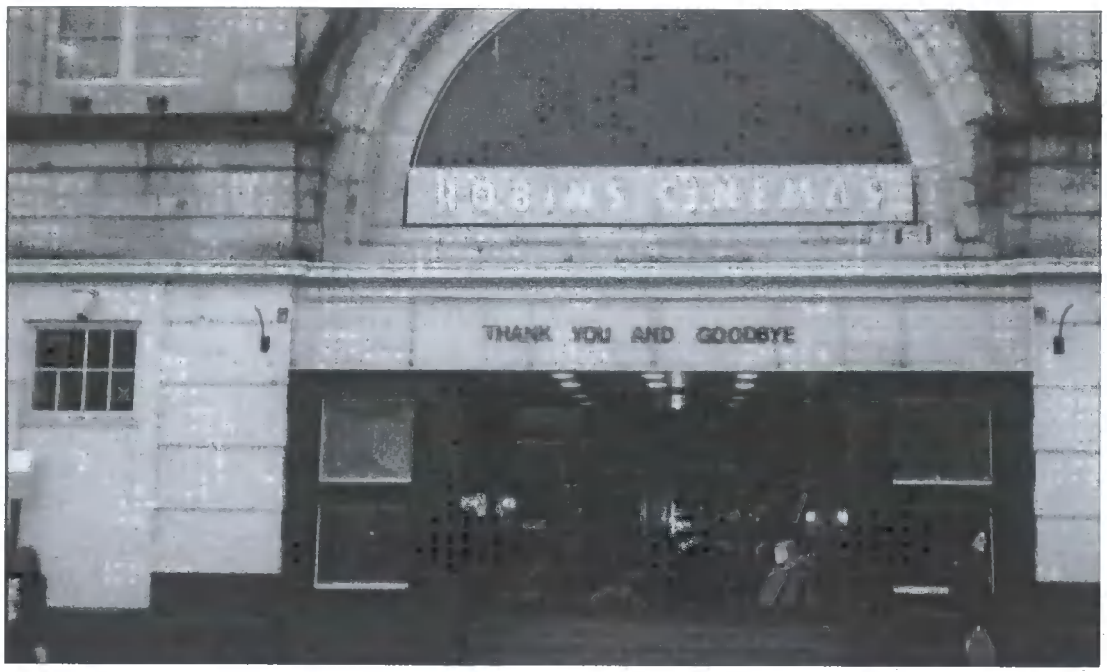
In contemporary marketing, the building of brand image and brand awareness is seen as the best way for companies to make their products stand out in a crowded marketplace (Klein, 2001; Ries and Ries, 1999). Brand names are themselves nothing more than words which lodge in the mind of the consumer, allowing, as with the ranch herd, one cow to be differentiated from another, "even if all the cattle on the range look pretty much alike" (Ries and Ries, 1999: 7). However, branding is much more than simply naming. Branded marketing seeks to evoke feelings of emotional attachment by linking the image of the product to aspects of the consumer's identity, lifestyle and aspirations. Brand development is therefore linked to the grouping of consumers into categories which may be reflected in consumer's elective responses to the brand.

In recent years, a number of the major high street leisure corporations have announced plans to focus the future development of their businesses on branded outlets located within central nightlife areas. The rise of branded and themed licensed premises has been analysed by Chatterton and Hollands (2003) who note how large-scale operators have sought to "rationalise production techniques...reduce costs and overheads, and tap into sacred consumer principles such as choice, quality through reputation, safety, convenience and reliability." The creation of a themed environment allows the corporate operator to develop several variations of the basic drink + sex + music = profit equation,

targeted towards, often quite subtly different, audiences. These different brand identities allow companies to operate a number of venues in the same city without over-duplicating their format (Chatterton and Hollands, 2003: 40-41). Branded outlets are of core importance to corporate players as they generate the highest proportion of turnover, profit and value for shareholders. For example, in October 2003, *Luminar Leisure*, operators of over 200 sites across the UK, announced a major rationalization and restructuring programme involving plans to operate a completely branded estate. The company said it would be investing £100m in the conversion of a large proportion of its unbranded sites into one of a number of brands- *Chicago Rock*, *Jumpin' Jaks*, *Liquid*, *Life Café*, *Lava/Ignite* and *Oceana*. The company's remaining unbranded outlets were to be operated separately under new management until suitable buyers could be found.

One of the central aims of branding is to develop consumer loyalty, however customers are fickle. As new premises open, the crowds move on, spending more of their Friday and Saturday nights (the vital peak trading hours) in one of the latest additions to the 'circuit.' Operators recognise that themed environments can soon become 'tired' and venues frequently have to be re-furbished, re-branded and re-launched in order to keep up-to-date with the latest trends. A fundamental problem for the chains is that, because their themed environments are replicated in urban centres across Britain (or even internationally) they have little distinctiveness and few decipherable links to particular regions or localities. Large-scale investment by national chains has transformed Britain's NTE into a series of, more often than not, somewhat standardized and homogenized 'brand-scapes.' As with the temples of day-time consumption, one high street can look much the same as another, each having its own predictable combination of 'market leaders' such as: *Yates's; J.D. Wetherspoons; Edwards; Hogshead*; *O'Neill's; Slug and Lettuce; Pitcher and Piano; All Bar One* and *Walkabout* (Figure 2 overleaf shows a convergence of new branded outlets in central Durham City over a two year period). For this reason, the high street brands are sometimes derided by consumers, the media, and industry insiders for their homogeneity, artificiality and 'soullessness.' One article in the *Manchester Evening News* bemoaned the development of an "identikit café culture" within Manchester's supposedly 'sophisticated' nightlife. The corporate bar chains, it was said, had already made "Castlefield akin to a tacky holiday resort at weekends" and were now threatening

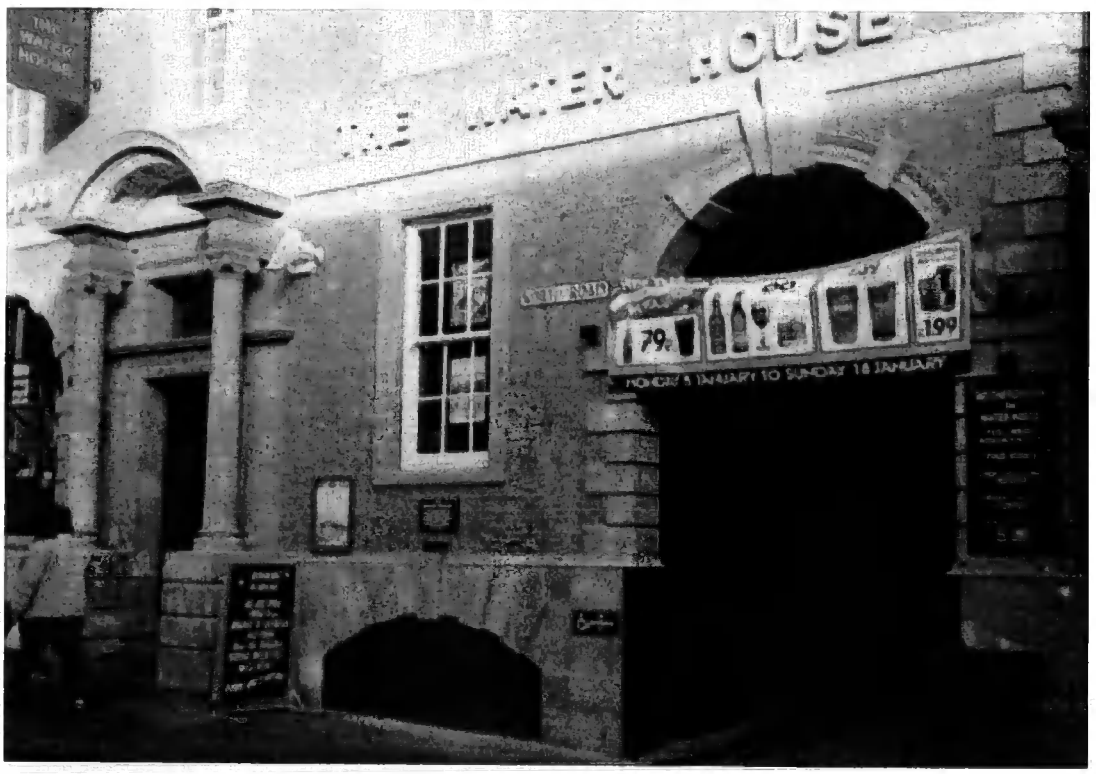
Branded Re-developments in Durham City, 2002-2003



The popular Robins Cinema, North Road

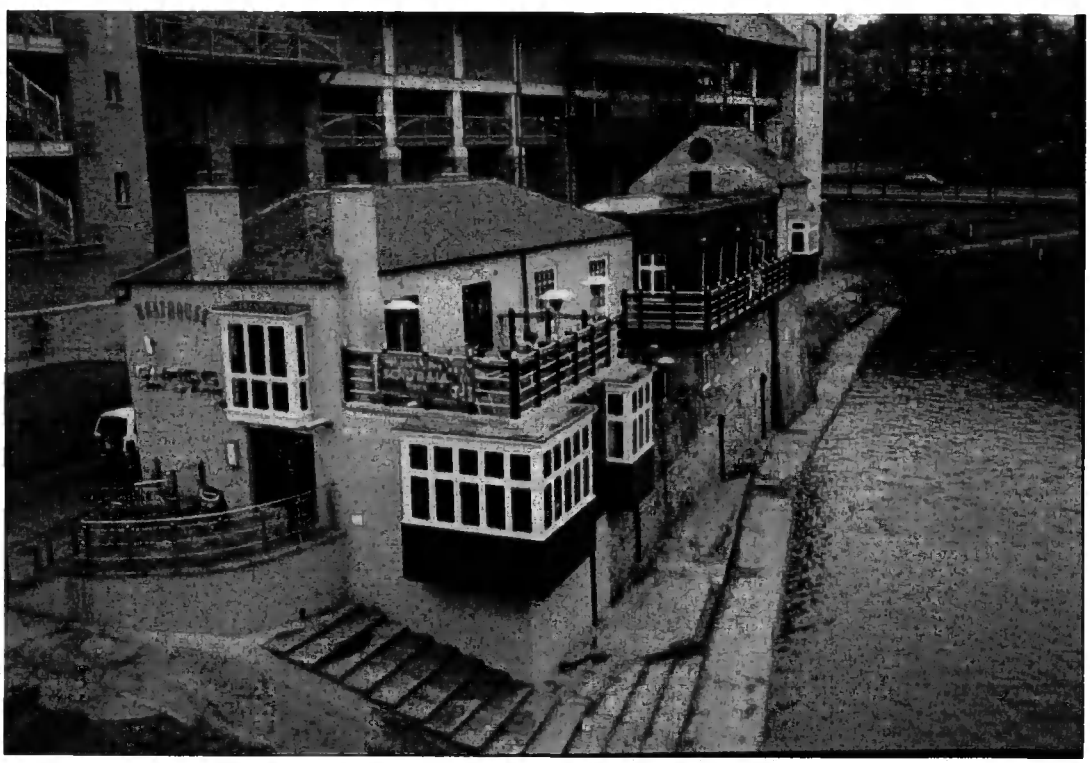
Robins becomes Regent Inns PLC's *Walkabout*

Former bank, North Road, Durham



Bank becomes J. D. Wetherspoons PLC's *The Water House*

Brown's Boathouse, River Wear



Boathouse becomes Ultimate Leisure PLC's *Chase*

Former shop, Saddler Street becomes Barracuda PLC's *Varsity*

Former amusement arcade, North Road re-developed as *Lacuna Lounge* by a local entrepreneur

"vogue-ish Deansgate Locks" with a similar fate (Press, 2001: 30). *The Which? Pub Guide 2004* criticised chain operators for their:

"...tendency to submerge the individual 'units' in conformity, make them all the same-same beers, same look (you can bulk buy that nice Irish green paint) and a series of managers who pass through. Such practices make sound business sense (economies of scale etc.), but it doesn't make for a very interesting product" (Turvil, 2003: 23).

Not surprisingly, articles in the trade press have also reflected this critique. Reporting on a night out in the small Cumbrian town of Penrith, Mirauer revels in the uniqueness of a nightlife still dominated by local independent operators, the diversity of which is:

"So much greater than the managed house drinking circuits of so many Northern towns with their depressing and loutish clientele, where the girls dress like Spanish whores, kiss with the chewing gum still in their mouths and eat their fish and chips while distractedly servicing the ardour of their nocturnal squires. It's dispiriting to think that the time warp will eventually be corrected and that Penrith, and towns like it, will become homogenized, carpeted by mediocrity and sameness, uniform and themed for the benefit of far off shareholders" (Mirauer, 2001:106).

Objectionably sexist and regionalist as such sentiments may be, they reveal a fascinating degree of world-weary cynicism and self-loathing, and a wish amongst certain operators to 'bite the hand that feeds,' by distancing themselves culturally and aesthetically from their core consumers.

To the critical eye, the branded chains thus provide the type of sanitized and predictable consumption environments that anthropologists and social theorists have identified as non-places (Augé, 1995; Ritzer, 2004). In Ritzer's terms, the rise of the branded night-time high street can be understood as part of a general shift within global capitalism from 'something' to 'nothing.' For Ritzer, the concept of 'something' implies a social form that is indigenously conceived, locally controlled and generally rich in distinctive content, as contrasted with 'nothing'- that which is centrally controlled and conceived and

relatively devoid of distinctive content (Op cit.) As one of Chatterton and Holland's informants succinctly notes when asked his opinion of one of the more 'aspirational' high street brands, "...it's actually *McDonalds* with a marble bar" (2003: 125).

The following paragraphs describe how the rise of the branded high street was assisted by various shifts in regulatory practice.

Controlling the use of urban space and time

Regulatory control of the night has long comprised of two major components: control of time (when things can be done) and control of space (where things can be done). The following paragraphs show how the high street was allowed to expand, occupying ever greater expanses of space and time in a manner dictated primarily by market forces.

Too Much Broth: The Story of 'Extended Hours'

It has long been argued, principally by Central Government and the drinks' industry, that extended night-time licensing hours might reduce violence and disorder by removing the incentive for people to consume large quantities of alcohol shortly before closure of the bar, whilst promoting a more relaxed atmosphere in which people drink the same amount, but over a longer period of time. It is concurrently suggested that the extension of licensing hours might facilitate the gradual dispersal of customers, thus reducing crowding, frustration and tension at taxi ranks, fast food outlets and other congregation points.[38] As noted in Chapter 1, when formulating the Act, the Government made no attempt to empirically investigate the matter. The *Time for Reform*...White Paper (Home Office, 2000a) justified its stance by referring to the recommendations of a then eight-year-old report which had been commissioned and published by the Portman Group, a drinks' industry lobby organization (Marsh and Fox-Kibby, 1992). Despite the paucity of evidence, optimistic assumptions regarding the impact of extended hours attained the status of 'received wisdom' in the later half of the 1990s. Such views were often

[38] I have argued elsewhere that there is a need for theory and practice to develop a more complex awareness of the ways in which NTE-related crime and disorder may be associated with the convergence of human activity across both time *and* space (Hadfield and contributors, 2005b).

expressed by members of a liberal opinion-forming elite, who took their holidays in the sunnier climes of Southern Europe, and whose ranks included a proportion of councillors and senior police officers.

The most ambitious local authorities actively reinterpreted existing restrictions, removing 'time limits' on PELs and encouraging Justices and police to adopt a similarly relaxed approach in liquor licensing matters. In order for de-regulation to progress, 'permitted hours' legislation and the strict criteria for extending those hours (Licensing Act 1964 s77) needed to be circumvented. To obtain 11pm-2am (or up to 3am in Central London) closing times, it was necessary for applicants to prove that the sale of alcohol was going to be ancillary to dancing or serving food. Accordingly, the new branded chains blurred the distinction between pubs, clubs and restaurants. Industry legal teams deliberately pitched applications in such a way as to convince the Justices that they were offering a new type of hybrid venue, something distinctly different from the 'pub' or 'discotheque,' something to which the old restrictions need not apply (see Chapter 8). As specialist licensing lawyer, Jeremy Allen explains:

"We were touring the country doing licences. Everyone wanted a chrome bar, white oak, flowers on the table...We would produce extensive market research, photographs and brochures. Hundreds of licenses were approved that previously might have been refused" (cited in Levy and Scott-Clark, 2004: 17; 19).

At the same time, local politicians and business leaders lobbied the police, who, when they did object to licence applications, were castigated for "needlessly obstructing city centre regeneration by adhering to a 'dated' and 'puritanical' control mandate" (Hobbs et al., 2003: 80). In the light of such criticism many senior police officers embraced the 24-hour city agenda, instructing their licensing officers that the "funds were not available to challenge applications for new late-licences. It was argued that it didn't really matter because the law was going to be changed anyway in the near future" (Allen, 2003a: 12; see also Light, 2000: 929). In many areas, police objections all but ceased, being replaced by an attempt to engineer the voluntary 'staggering' of closing times (see Hadfield and contributors, 2005b).

These processes of 'back door de-regulation' resulted in a sharp increase in the number of licensed premises trading into the early hours.[39] In the centre of British cities, the impact of this transformation was dramatic. Even long-established entertainment areas such as London's West End experienced unprecedented growth. In 1992 there were 91 venues in the West End holding PELs, by 2000 this figure had risen to 278, an increase of 205% (Town Centres Limited, 2001: para 5.108).[40] There was, and remains, a general trend toward the development of larger entertainment premises with increased capacities in the area (ibid: para 5.20). Between 1992 and 2001 there was a 328% increase in the capacity of PEL venues in the West End, whilst the number of such premises licensed to operate beyond 1am doubled between 1993 and 2001. As a raw total, the number of West End venues closing between 3am and 4am rose from 45 in 1982 to 199 in 2000 (City of Westminster, 2002: 8.56d).

Whilst assisting business, these ad hoc experiments in extended hours did not deliver the anticipated public 'goods.' Leisure market colonization of the early hours had a neutral effect, at best, on crime reduction outcomes, whilst placing chronic and temporally extended pressure on emergency and environmental services (Alcohol Harm Reduction Group, 2003; Hadfield and contributors, 2005b). In response, many local authorities and police forces began to reconsider their stance, returning to a more cautious and restrictive approach by utilizing the proactive crime reduction opportunities afforded by their licensing function (GLA, 2002a; Green, 2003; Isle of Man Constabulary, 2002; Maguire and Nettleton, 2003). These regulatory u-turns placed local public sector practitioners directly at odds with Central Government. The State continued its love affair with business, clinging doggedly to its de-regulatory mantra, despite, or regardless of, mounting evidence from the academic and practitioner communities linking the increasing availability of alcohol with corresponding rises in various forms of social harm (Academy of Medical Sciences, 2004; Metropolitan Police, 2004; Room, 2004). A

[39] For example, in 2003, market analysts WestLB Panmure estimated that 61 per cent of the quoted high street bar market already traded beyond the normal permitted hours of 11pm (Neame, 2003).

[40] Some trade commentators argue that local authorities were able to charge "excessive fees" for PELs and therefore had a direct financial interest in issuing as many of them as possible (Neame, 2003: 30).

parallel story was unfolding in relation to control over the spatial distribution of licensed premises.

Too Many Cooks: The Story of 'Cumulative Impact'

As noted above, from the early-1990s onwards, leisure companies began to compete with each other for development sites as nightlife brands were rolled out across the nation's high streets. By the later part of that decade, some local magistrates had begun to adopt a more cautious approach to licensing in locations already well supplied with pubs and clubs. In such circumstances, the Justices might require applicants to prove the existence of a "need, or unsatisfied demand, for the provision of an additional licensing outlet before they would consider the grant of a new licence" (Clowes, 1998: 18). The concept of need had, since the inception of alcohol licensing circa 1495, given "effect to the policy of controlling the number of drinking establishments by methods other than pure market forces. Justices and the Judges of Assize who supervised the system were given the authority to suppress alehouses which were in their view unnecessary" (Mehigan, et al., 2001: 261: para 2.2). More recently, the need criterion, largely shorn of its moral connotations, was often used by Justices as a method of paying due regard to the functional character and possible exacerbation of nuisance and disorder within an area (Light and Heenan, 1999). However, the Justices enjoyed complete discretion in applying the criteria, with some benches adopting a much more liberal approach than others. These 'procedural inconsistencies' provoked leisure industry ire. One trade commentator notes how, Tim Martin, Chairman and founder of major pub company, *J. D. Wetherspoon PLC*, [41] "successfully challenged the concept of 'need' head on, arguing that if he was prepared to invest, there must be a market" (Nearne, 2003: 28).

As with extended hours, the police and magistracy were lobbied on the issue. One Chief Superintendent from a Midlands city told me:

[41] Following over a decade of major expansion, Martin's company now has approximately 600 UK outlets. The company have regularly expressed their intention to open 100 new pubs per year, with a target of 1500 premises across the UK. See also Macalister (2001).

'Some years ago, in response to comments made from politicians and business people the Chief decided, as a policy, not to object to licensed premises on the basis of need, which we traditionally had done. People were saying; "because you keep objecting on need, it's stifling the ability of our business to grow."'

The magistracy also become a target of trade criticism, resulting in a thorough appraisal of the licensing system by the Better Regulation Task Force.[42] In their final report of July 1998, the Task Force recommended that liquor licensing jurisdiction be transferred to local authorities, with the role of the licensing Justices limited to the handling of appeals. Importantly, the report also specifically recommended that "regulation should not be used to manage demand through judgements by licensing authorities over the need for additional providers" (Better Regulation Task Force, 1998: 7).

The proposed transfer of licensing authority to councils was strongly resisted by the Magistrates' Association (see Magistrates' Association, 2000) and Justices' Clerks' Society. In a bid to retain jurisdiction and demonstrate their members' ability to modernize and self-regulate, these bodies sought to adopt many of the Task Force's recommendations. Publication of the *Good Practice Guide: Licensing* (Justices' Clerks' Society, 1999) provided an opportunity to display new-found commitment to uniformity of practice across the 370 licensing committees in England and Wales. In their introduction to the Guide, senior officials explicitly warned their members that it was now necessary to "demonstrate that the courts are the right place to adjudicate on licensing matters into the next century" (Fuller and Moore, 2001, cited in Mehigan and Philips, 2003: 912) whilst urging committees to "review, reflect and ultimately, to adopt many of the suggested practices" (ibid.)

The Guide clearly highlighted the test of need as an issue of 'inconsistency' (Justices' Clerks' Society, 1999: para 3.25) and moreover one that was now "out of date and unnecessary" (Op cit: para: 3.23). In recommending abolition of need, the *Guide*

[42] A commission appointed by the Chancellor of the Duchy of Lancaster in September 1997 to advise Government on methods of improving the effectiveness and credibility of regulatory policy. The recommendations of the Task Force proved to be highly influential, informing the White Paper, *Time for Reform* (Home Office, 2000a) and subsequently, many of the core provisions of the Act.

implicitly endorsed laissez faire (Government/trade) opinion which held that within a competitive market, economic forces and planning law[43] alone might effectively regulate the number of licensed premises in an area.

The Guide did not however entirely abandon the concept of market intervention. Committees were recommended to consider "issues of public safety and the protection of the public against nuisance and disorder" by ensuring that "premises in an area do not become so numerous as to produce problems of noise and disorder" (Op cit., para: 3.26). The Guide put the onus "squarely on the police to object should they have concerns about an application for a new licence" (Light, 2000: 928). As the *Guide* stated, "the police have an important role to play in licensing to ensure that where there is an identifiable risk of public disorder or to community safety it is drawn to the attention of the committee" (Op cit: para. 3.29). Moreover, the police were required to show that such risks were "real rather than fanciful" (Op cit: para. 3.28).

Within the day-to-day proceedings of the licensing courts, the sceptical tone of this recommendation placed an onus upon objecting witnesses (such as police officers, Accident and Emergency consultants, local authority officials and residents) to produce evidence *directly linking* crime and disorder to licensed premises within each defined locality. Police statistics showing hot spots and rises in recorded violence and disorder within nightlife areas and assault data from Accident and Emergency Departments (AEDs) were the main evidential devices used in such objections. As described in Chapter 8, attempts to discredit such statistical evidence became an important focus for those legal practitioners tasked with securing new high street on-licences for their clients and also for trade-funded expert witnesses. Furthermore, the technical difficulties faced in meeting the 'real rather than fanciful' test served to discourage objections from the police, whose role in limiting the criminogenic growth of the NTE had, by the same stroke, become crucial. In the absence of formal police objections, the case of other objectors could be fatally undermined. The argument could now be put to a licensing committee that as the police had raised no objection, "any risk of alcohol-related

[43] Issues relating to Planning Law and its longstanding inability to perform this function were discussed in a footnote to Chapter 1.

problems cannot be real and that under the terms of the *Guide*, the licence should be granted" Light (2000: 929).

The abolition of need served to transform the way in which applications were considered, leaving "magistrates under the impression that they had to grant any new licence provided there wasn't anything wrong with the premises or the applicant" (Allen, 2003b: 14). This approach was taken one step further during the development of the Act. Neither the White Paper (2000) nor the *Alcohol and Entertainment Licensing Bill* (2002) made reference to over-concentration as a potential crime risk, however fanciful, or indeed real. The draft legislation provided that where objections to an individual applicant's operating plans were received, licenses could be denied or have conditions attached to them in the interests of preventing crime, disorder and public nuisance, but that such issues were to be addressed solely at the level of individual premises. The good operator/good operation test was to be the only admissible criterion.

Meanwhile, back on the high street, the abolition of need and discouragement of crime-related objections had begun to have a powerful de-regulatory effect, fuelling the market-led development of spatially concentrated drinking circuits. The exacerbation of nuisance and disorder, often fuelled by the heavy discounting of alcohol, produced a backlash of public and practitioner opinion. Far from consigning cumulative impact to history, the abolition of need, together with the Government's apparent rejection of all such criteria, served to raise awareness of the issue and focus minds. The topic was set to become the most contentious and divisive issue in the regulation of contemporary nightlife.

By the autumn of 2002, there was widespread alarm amongst public sector practitioners and pressure groups regarding the Government's apparent intention under the Act to afford local authorities little or no power (outside of planning law) to control either the spatial agglomeration or terminal hours of licensed premises (Alcohol Alert, 2002). Assistant Chief Constable Rob Taylor of Greater Manchester Police (GMP), formerly the ACPO spokesman on licensing matters explained his concerns:

"One thing that's absolutely got to be writ large is that whatever group takes responsibility as licensing authority, they are given teeth. One issue is the question of saturation in an area. If you look into the way the legislation is cast at the moment, that doesn't appear as one of the measures that the licensing authority needs to take into account when it's making its judgement and we're saying it should. The experience in big cities like this and in London for example, is very much that there's almost a point at which the number of premises in an area precipitates violence no matter how well they are managed individually."

Yet, it appeared that local authorities were to be rendered impotent in such matters; lacking the necessary ability to strategically control the NTE and its dominant youth and alcohol-led trajectory, in particular (see Hobbs et al., 2003: 263-267). Concern intensified following publication of the *Framework for Guidance*, a document described in a conference presentation by one prominent licensing barrister as reading "like a piece of hate mail to local authorities." There was increasing evidence of a concerted effort on the part of Central Government and elements of the trade to ensure that local authorities were stripped of the wide discretionary powers they had enjoyed in relation to PELs. As noted, in response to the failure of earlier laissez faire approaches, some councils, principally including the City of Westminster, had decided to adopt a more restrictive regulatory stance. Such policy shifts had been met with displeasure by a Government/trade alliance keen to press ahead with the de-regulatory legislative agenda. The shift of licensing jurisdiction from the Home Office to the DCMS in 2001 had been symbolic. It had indicated a wish on behalf of Central Government to portray the drinks industry as a benign and economically important player in the leisure and tourism sectors, whilst correspondingly 'sexing-down' long-established assumptions of a link between alcohol policy and crime and disorder. During 2002, Andrew Cunningham, the official in charge of licensing policy at DCMS became the subject of a complaint to the Cabinet Secretary for allegedly making partisan speeches in favour of the drinks industry. He was claimed to have denounced critics of Government policy as "extremists" and "nanny staters," whilst assuring his trade audiences that dissenting local authorities would be brought to book; the time had come, he told delegates, to "stop Westminster City Council's silly games."

The power to intervene in the market and guide development with due regard to the needs and wishes of a broad range of stakeholders was seen by many as central to the effectiveness of the new local licensing authorities. Representations from a number of bodies supporting recognition of the 'cumulative impact criteria' were made to the National Guidance Sub-Group of the Bill Advisory Group. Advocates of the approach emerged from a broad range of interested parties including the Local Government Association (LGA); the Greater London Authority (GLA); the Civic Trust; Alcohol Concern; the Institute of Alcohol Studies (IAS); ACPO; and, to the surprise of many, from trade organisation BEDA.[44] By the time the Guidance began its passage through the House of Lords, a powerful lobby had emerged. Stormy debate in the Lords resulted in a Government u-turn, with cumulative impact considerations eventually afforded grudging[45] acknowledgement within the Guidance (see Chapter 1).

'Sorting' the Competition: The Story of 'Rave'

Before the alcohol industry could really exploit the urban leisure market it was necessary to deal with the rather inconvenient problem that drinking was becoming unfashionable. Between 1987 and 1992 pub attendance had fallen by 11%, with a further 20% slump predicted over the following five years (Henley Centre, *Leisure Futures*, cited in Carey, 1997: 21). The ascendant 'rave' culture had eschewed alcohol and licensed premises in favour of illegal drugs, soft drinks and spontaneous partying in warehouses, motorway service stations and the rural wilderness. This sort of behaviour could not be tolerated (it was beginning to effect the 'bottom line').

[44] BEDA had long been more critical of the Government's proposals than other trade organizations, particularly those drawing their membership predominately from the 'normal permitted hours' pub trade. BEDA members had traditionally dominated the late-night market, prompting the organizations cautious and sceptical stance to often be dismissed by trade and Government commentators as motivated by protectionism.

[45] The Guidance contains a number of lengthy, ambiguous and contradictory clauses pertaining to the determination of cumulative impact. It also claims that the problems generated by an over-concentration of licensed premises occur in only a small number of city centre areas. In other work, which focuses on the genesis of cumulative stressors within the urban environment, I have encouraged readers to question the logic of this assertion (Hadfield and contributors, 2005b).

Rave culture was an easy target for suppression by the alcohol industry's political allies, for three primary reasons: Firstly, it involved the nocturnal movements of large numbers of young people and the furtive sequestration of private property, particularly rural agricultural land; secondly, it was driven by the 'buzz' of psychoactive drug consumption, particularly the Class A substance Ecstasy; and thirdly, it was associated with 'noisy and disruptive' unlicensed outdoor events. The Criminal Justice and Public Order Act 1994 was the most draconian of a number of laws enacted during the period 1990-1997, which increased police powers against promoters and free party organizers as the alcohol lobby and its political allies consorted to kill rave in its original sub-cultural form (Carey, 1997; Collin, 1997). In introducing the Criminal Justice Bill, Home Secretary Michael Howard explained the Government's intention that: "Local communities should not have to put up with, or even fear the prospect of, mass invasions by those who selfishly gather, regardless of the rights of others" (Hansard, 11 January 1994). Sections 63-67 of the ensuing Act provided that the new powers were to apply in respect of gatherings, or even suspected gatherings, of people "likely to cause serious distress to the inhabitants of the locality" (see Manchester 1999: 7.22-7.27). Party organizers would, henceforth, be arrested and their assets seized, notably any sound systems capable of generating 'a succession of repetitive beats' (see Collin, 1997).

Dance culture was not humanely put to sleep in 1994, but rather subjected to a lingering death. Once safely corralled within licensed premises, the scene was sanitized, commercialised and infused with an alien drink-led aesthetic. This was achieved with great success via drinks industry sponsorship of club tours, specially targeted advertising campaigns and, most importantly, the development of new 'aspirational' products, chiefly bottled and branded cocktails of fruit juice and high strength spirits (Brain, 2000; Carey, 1997).

It is instructive to compare the political suppression of rave with the subsequent defence of business interests in relation to extended hours and cumulative impact. The night-time high street also involved the 'mass invasion' of public and private space by large crowds of intoxicated young people; also created 'noise and nuisance'; attracted criminals, and generally caused distress to innocent residential communities. The difference was of

course that, unlike rave, the proceeds of this particular form of "psychoactive consumption" (Brain, 2000: 6) could be channelled into the pockets of corporate investors and used to drive the economic renaissance of post-industrial cities. As we have seen, the legislative response could hardly have been more divergent, nor the political pronouncements of both Tory and Labour administrations more hypocritical. 'Stress-inducing mass invasions' were soon to become, in official eyes, not such a bad thing after all.

With the external competition defeated[46] and regulatory restraints removed, the trade could now pursue its course of profit maximization, a course that would increasingly involve confronting adversaries within its own ranks.

Location, Location, Location

Further insight into the industry's drive to colonize the night can be gained by examining the commercial forces which drive spatial agglomeration.[47] Why is the right location so important to operators? Why is it necessary to be located so close, or even next door, to one's competitors? Are there any commercial drawbacks to being so located? The following paragraphs will suggest some answers to these questions.

In interview with trade newspaper *The Morning Advertiser,* Paul O'Reilly managing director of the pub company *RTA* expressed the opinion that business success within the leisure market was "a question of location, location, location" (Ridout, 2003: 38). O'Reilly also acknowledged the downside of this commercial reality in terms of compact urban environments which now contained "too many operators, too many silly-priced drinks promos, and too many consumers" (ibid.). This over-saturation was brought about by the pursuit of profit. In O'Reilly's words, "I think the problem we've got on the high

[46] It was not only the rave scene that was squeezed out. I have noted elsewhere how in many towns and cities the new branded outlets replaced other, less alcohol-based attractions such as high street cinemas, live music venues and even restaurants (Hadfield, 2004; see also Chatterton and Hollands, 2003).

[47] The night-time high street is also characterized by commercially-driven temporal agglomeration, to the extent that, even within a de-regulated market, economic forces encourage premises to close at similar times. I discuss this issue in detail elsewhere (Hadfield and contributors, 2005b).

street arose because a lot of people looked at the market and thought it was easy to get into it. They thought: 'if they (their competitors) can make a lot of money, so can we" (ibid.).

In 2001, less than four years after taking over a handful of rundown bars in Newcastle, North East-based *Ultimate Leisure* had expanded at an incredible rate into a PLC worth more than £30 million. By May 2003, *Ultimate* were operating 27 bars, restaurants and hotels across Tyneside and were moving into Nottingham, Leeds and Sheffield, with two new bars about to open and another three in the pipeline. In 2001, the company had a turnover of £16.6 million, an increase of 38 per cent from its financial results for 2000 and profits of £4.2 million, a 33 per cent increase for the same period. In an interview with the trade press, Bob Senior, *Ultimate's* Managing Director commented:

"We've done nothing more than anyone else could have. We simply spent the right kind of money on the right premises in the right location. We buy in the already established market... One of the reasons we're so successful is our ability to identify prime sites in the fulcrum position of established drinking circuits" (*Night*, 2001a: 18-19).

Senior's self-congratulatory tone stood in contrast with the comments of Myles Doran, Marketing Manager of *Mustard Entertainment Restaurants*, who, in interview with the same trade publication, explained a business failure in the following terms:

Night Magazine: "This time last year we featured *Mustard* in Birmingham. What lessons have been learnt from the problems you encountered there?

Doran: "*Mustard* in Birmingham was a gorgeous venue but is the best example I can think of in recent bar history of the old nutmeg 'location, location, location.' It is easy to talk in retrospect, however, if *Mustard* was positioned on a circuit/high street you would now be talking to me about what lies behind the success of the brand. There is a fine line between success and failure as the marketplace becomes ever more saturated, so now, more than ever, you really do need to deliver" (*Night*, 2001b: 33).

The 'out-of-town' expansion policies pursued in the 1980s and early-90s by nationwide operators such as the *Rank Organization* and *First Leisure* had, by the mid-1990s come to be regarded as fundamentally flawed. In 2000, Rank's recently constructed and commercially ailing, out-of-town nightclub and feeder bar development *Pulse, Vogue* and *Hotshots* in Sheffield was sold to *Brook Leisure* for a knock-down price. Instead of re-launching the development, which had originally cost *Rank* £8 million to build, Brook immediately transferred its licence to the former *Odeon Cinema* in Sheffield City centre. Commenting on the deal, Jason Brook, director of *Brook Leisure* stated:

"We've bought the most expensive purpose-build nightclub in Yorkshire and we're shutting it down to transfer the licence...we now have a 50,000 sq ft building down the road that we can convert to a non-leisure use- a call centre or something of that nature."

By contrast, Brook described the *Odeon* site as

"So important to us that we stuck with it through thick and thin...we think it's one of the best locations in the country. It's right between the main drinking drag and the taxi rank. In fact, since we acquired the building, the gap between the pub run and the club has been filled with new bars like *RSVP* and *Lloyds*" (*Night*, 2000: 43).

Classified advertisements in the trade press confirm the commercial primacy of a central on-circuit location:

"City centre nightclub for sale in the North of England's most rapidly expanding city centre leisure area. Close to *Chicago Rock*, *Varsity*, *Wetherspoons*, *Edwards* etc., 600 capacity, 3am PEL, open 7 nights" (*Night*, 2001b: 94).

"Northern Home Counties Town Centre. High Street night club on A3 Circuit, 2am licence with 540 capacity" (ibid.).

The commercial benefits of being located "at the fulcrum of an established drinking circuit" seem clear. One's potential market and customer base is well-established and

predictable. As long as one can deliver the type of experience that customers are looking for at the right price, and provided there are enough customers to go round, one's success seems assured.[48]

Securing the Site: Trade Tactics

Most chain operators have a dedicated Estates' Manager, usually a very senior person within the organization, who deals with operational expansion and the acquisition of new development sites. Expanding chains are constantly seeking and targeting new locations in towns and cities across the UK and beyond. The following case notes permit insight into the methods employed by corporate Estates' Executives:

My supervisor and I are called to a mysterious meeting (the purposes of which are unspecified), at the Head Office of a national leisure corporation. The company is located in a huge industrial estate containing a maze of non-descript warehouses and offices. We have not been given details of the exact location of the site and our taxi driver has difficulty finding it. We stop to look on a map showing the location of businesses on the estate. The company we are looking for is not listed. We ask at a local taxi office and finally obtain directions. We are dropped in a car park which contains rows of executive cars at the front of a large white anonymous looking building with no signage, blacked out windows and extensive CCTV coverage. The exterior of the building offers no clue as to what goes on inside and we remain uncertain that we are in the right place. We enter a smoked glass and marble reception area. The female receptionist confirms our appointment and we are directed to wait on a black leather couch. After five minutes we are shown into the building, we pass through plush, design-conscious and ultra modern office space. Fixtures and fittings are luxurious and of the highest quality. The offices betray nothing which might suggest that the profits which paid for such opulence were generated by selling tacky escapism in rundown seaside resorts. The building appears to be staffed almost entirely by attractive young women. The receptionist shows us to a meeting room where 'Mr Big's' female secretary asks us to wait before closing the door. We are left to wait for around ten minutes and begin to feel as though we have entered a

[48] For a discussion of the consumer appeal of 'drinking circuits' see Hadfield and contributors, (2005b).

real life Bond movie and are about to be interrogated by some psychotic criminal mastermind.

Eventually we are joined by 'Mr Big,' a man in his late-fifties wearing an immaculate pinstripe suit. He seems affable enough as he introduces himself as the Estates Manager of the company, we are offered tea and biscuits and the mood brightens. After a few minutes of small talk, Mr Big gets down to business. He explains that he has called this meeting because he has heard a lot about our research and thinks that we might be able to help him. He explains that what he wants us to do relates to two approaching licensing hearings regarding new licensed premises in different cities. He asks his secretary to bring in some paperwork and proceeds to show us detailed radius maps of the city centres in question, both of which are around 200 miles away in different regions of England. The maps are marked up to show the location of all the licensed premises in each city centre, accompanied by a key which details their names, trading details and capacities. Mr Big explains that his company already has a significant stake in these NTEs. He displays an intimate knowledge of the leisure market in each city, detailing issues such as the trading profile of premises, drinks discounting, policing constraints and crime and disorder problems. The scene resembles old film footage of the World War Two Cabinet Office 'War Rooms' as Mr Big explains his company's strategy for each city, their role and stake in it, and future expansion plans.

Mr Big's concern is protectionism. His plan is to mount licensing objections in relation to the new competition his company's premises will face from the national chain operators seeking licensing approval in these cities. He sees major threats to his company's business in each city emanating from the two ventures in question. This protectionism is pitched to us as mutual concern regarding the crime and disorder and environmental impact of the new premises within these cities. He explains that there will be no objections from the local authorities who are still "promoting growth." Similarly, there will be no residential objections as the city centres in question are sparsely populated. Mr Big describes the liberal approach of Justices and police in one of the cities as having offered an "open season" for development. This season had now drawn to a close. The police were opposing new licences, but did not, Mr Big informed us, have sufficient

resources, experience or competence to mount effective legal objections. Mr Big explained that he would like us to visit these cities and to write reports that might be used in court in support of his company's objections. He requested that our meeting be treated as strictly confidential. We say we will consider his proposals and respond in due course.

As we leave a call comes in for Mr Big from a leading licensing lawyer whose name I recognise. Mr Big asks me if I have given evidence before and the names of the licensing lawyers I have encountered. I begin to get the impression that licensing in the UK is a small world. Mr Big appears to know all the licensing solicitors and barristers and executives of the major companies. I feel I have gained an extra dimension of insight. It seems little wonder that rapid expansion of the High Street takes place. Leisure companies such as this are well resourced and connected professionally, legally and politically, they have detailed market knowledge and strategies in place and a clear idea of what they want and the various ways and means of getting it. Once they've got what they want they then seek to vigorously protect it. The scene contrasted sharply with my visits to police licensing offices, typically home to one beleaguered Licensing Sergeant struggling with limited resources against a mountain of paperwork with little organization power or support, focusing on every-night local problems and largely atomized from the regional or national picture.

As with most regulatory and sociological themes relating to the high street, commercial protectionism involves issues of time as well as space. Up until the mid-1990s, SHC holders would typically be nightclub operators whose premises were purpose-build and operated in accordance with the conditions of a PEL and the legislative requirements of Section 77 (see Chapter 1). As noted, during the decade of de-regulation that preceded the Act, more and more PELs and SHCs were issued, very often to premises which had not been structurally adapted to the same degree and which did not truly meet the s77 criteria of alcohol sales being ancillary to music/dancing and/or dining. This transformed the late-night market by opening it up to encroaching competition from the pub and bar chains. The new generation of late-night café bar/club hybrids gained popularity with consumers partly because, in comparison with the traditional nightclub, they offered free, or substantially cheaper admission charges, plus possible additional savings on the price

of drinks. These highly competitive insertions into the late-night market threatened the profits of long-standing late-night operators. As the following case study illustrates, some operators sought to uphold strict interpretations of s77 in order to protect their established interests within the late-night market.

The commercial realities of the British high street dictate that, in pubs, bars and clubs after 9pm, drinking is hardly ever ancillary to eating, or even to dancing.[49] However, during the 1990s, post-11pm trading was increasingly encouraged for the reasons outlined above. Many Justices were happy to provide a liberal interpretation of s77 and although the police had powers under the 1964 Act to seek the revocation of a SHC on the grounds of s77 non-compliance, in practice the law in relation to such matters was rarely enforced (Allen, 2003:d). In the leading case of Northern Leisure v Schofield and Baxter,[50] a nightclub chain (now part of Luminar Leisure) challenged a Magistrates' decision to grant a SHC to a premise that was not intending to provide dancing throughout the whole of its opening hours. The applicants also anticipated that no more than 2% of total turnover would be from food. The High Court's judgement held that courts should consider the whole period of trading and not refuse a licence simply because during some periods, customers would be neither eating nor dancing. Furthermore the court held that, although the facts of the case made it unlikely that drinking was going to be a merely ancillary activity, the magistrates had been entitled to believe that this was the applicant's intention.

Following this decision it became even more important for SHC applicants to demonstrate their intentions to provide food and entertainment. This was done by outlining the facilities and services that were to be provided, rather than the extent to

[49] My observations indicate that those consumers who choose to 'eat out' generally prefer to either dine in a dedicated restaurant before moving on to another venue for their drinking and dancing or to visit a late-night restaurant (traditionally a 'curry house') or take-away at the end of their night out. Late-night café culture has yet to significantly penetrate the West End of London, let alone our provincial urban outposts. In British cities, alfresco eating in the early hours still consists principally of standing on the pavement shovelling sauce-drenched and dripping, kebabs, saveloys and chips into one's mouth. After consuming ten bottles of luridly coloured vodka and fruit juice mixtures this task undoubtedly involves some degree of 'sophistication.'

[50] *Northern Leisure v Schofield and Baxter* 164 JP (2000) 613, Licensing Review (43) 2000 (October).

which patrons might make use of such facilities.[51] In a trial setting this would typically involve the presentation of evidence in the form of plans outlining the size and location of dance floors, kitchens and dining areas. It might also involve the submission of glossy menus and brochures providing detailed descriptions of the intended music policy and other forms of entertainment offer. In this way, the law encouraged a somewhat cynical approach by applicants, who, in order to obtain the late-night trading hours they desired, had to vow to provide substantial food and entertainment facilities in the full knowledge that these facilities were likely to be little used.[52] This gaping disjuncture between the requirements of the law and the commercial realities of the high street were an open secret amongst both operators and enforcement agencies. In abolishing permitted hours, the Act effectively swept away this anomaly, allowing in principle any style of operation to extend its late-night trading hours provided that certain individually negotiated conditions could be met. Impending reform did not however stop Luminar from continuing to question the criteria by which SHCs were being granted to its pub chain competitors.

Between 2000 and 2004, two bar brands, J.D. Wetherspoon's 'Lloyds No 1' and Regent Inn's 'Walkabout,' made major insertions into the late-night market. Both brands were performing particularly well and expanding rapidly, both physically in terms of their 'rolling out' across the nation's high streets and temporally in terms of obtaining late-

[51] In the context of SHC *revocation* proceedings brought against *existing* premises, courts might typically have been presented with evidence indicating that a premise was not s77 compliant because customers had been observed to use the premises primarily to drink.

[52] It is not suggested that applicants were regularly committing perjury by promising to provide facilities and then simply failing to do so once a licence was obtained; in the vast majority of cases, the physical features such as kitchens and dance floors would be installed as outlined in court. Operators needed to comply with the basic requirements of s77 in order to guard themselves against the possibility of its enforcement and the scurrilous whispers of competitors. In a worst case scenario this might involve licence revocation proceedings being mounted as a result of police investigations. The actual *use* of such facilities and the provision of services was a quite different matter. The disjuncture between the requirements of s77 and the dictates of the market produced quite farcical results as the Security and Licensing Manager of a major pub chain plc candidly admitted:

"Our *Select* chain is fully fitted out with state-of-the-art kitchens, the vast majority of which are locked and gathering dust. They have to be opened and cleaned every so often to meet the environmental health (inspections). We have the food but nobody wants to buy it. There's food in our nightclub freezers which stays there until it's out of date. I have to remind managers to throw it out and replace it every so often. It's just a loss that has to be written off."

licences. Both forms of expansion met legal challenge from Luminar, a company which had become the UK's largest nightclub operator. Luminar continually sought to draw the attention of the courts to the open secret of s77 non-compliance, in some cases employing private investigators to secretly video activities within their competitor's premises. A report in trade paper The Morning Advertiser, noted that:

"The opening of 9 Lloyds No. 1 sites in the past year will help J.D. Wetherspoon turn over £100m at its 50 Lloyds sites this financial year-a 20-fold increase on the £5m a year being achieved by the original 10 sites. The success of the 50 Lloyds No.1s- 34 now have late-licences with many applications pending – also sheds light on the legal challenge by nightclub and venue bar chain Luminar to J.D. Wetherspoon's attempts to obtain late licences for the brand" (Morning Advertiser, 11 September 2003: 11).

In an appeal by Wetherspoons against the decision of Norwich Magistrates' Court to deny them a SHC on the grounds of anticipated failure to comply with the requirements of s77, the Norwich Crown Court found that from 8pm onwards, the vast majority of Wetherspoons' customers were clearly drinkers and concluded that the company's motivation for seeking a SHC for their Lloyd's No. 1 outlet in the City was to tap into the late-night drinking market. In spite of this, the court followed the Schofield interpretation in finding that the applicants' had met their legal duties by stating their intention to provide music, dancing and food, and that these were the key criteria, as opposed to whether customers would actually want or use such facilities. The judgement also expressed the view that times had changed and that late-night drinking was now part of contemporary life to the extent that s77 should be interpreted more generously than in previous eras.

Luminar applied to the High Court for Judicial Review of this decision. In a letter to pub trade newspaper The Morning Advertiser, Luminar Chief Executive Stephen Thomas defended his company's actions:

"What we require is a clarification of the law. If pubs can turn into late-night venues by putting in a dance floor and claiming that this is the principal activity then we too will be

happy to operate in this way. However, our understanding is that the drinking element of the activities must be ancillary at all times when the venue is open. We do not believe that the Lloyd's No. 1 in Norwich meets this criteria especially bearing in mind the critical time beyond normal licensing laws. Our opinion was supported by the local bench who refused the initial application" (Morning Advertiser, 28 August 2003: 15).

In his High Court judgement of October 2003, Mr Justice Stanley Burton found in Luminar's favour. The judge rejected the approach of the Crown Court and the more generous interpretations of the law implied in the Schofield case. Burton reiterated that the facilities provided for customers were of vital importance. However, he stressed that the courts were entitled to assess whether or not these intentions were genuine and the likelihood that a sufficient number of customers would make use of the food and dance-related facilities to render the sale of drink ancillary. The judge also made it clear that in making such assessments, it was legitimate to consider evidence relating to customer behaviour in similar premises run by the same operator in which SHCs were already in force.[53]

Wetherspoons subsequently took the case to the Court of Appeal arguing that judge Burton had failed to draw the essential distinction in case law between the bona fide provision of facilities by the licensee and the use to which such facilities were put. If it could subsequently be found that the premises were not being used in such a way that the sale of alcohol was ancillary, then it was the duty of the police to seek a revocation of the SHC (Allen, 2004). In a landmark judgement of April 2004, the Court of Appeal Judges upheld Burton's decision and made it clear that the mere provision of facilities for music and dancing was necessary but not sufficient. The applicant was also required to show that both they and their customers would be using the premises in such a way that alcohol consumption was indeed ancillary.

The Court of Appeal judgement in Norwich Crown Court v Luminar Leisure represented a significant victory for Luminar and had much wider implications. Clarification of the

[53] In the case of an application from a new independent operator one could of course, strictly speaking, only speculate as to the primary purpose for which people might resort to the premises.

law relating to s77, arising as it did in the dying days of the Licensing Act 1964, arguably closed an important legal loophole. In short, the judgement made it clear that extended hours should not be obtained mainly for the purpose of selling alcohol, the power to grant an SHC was not to be used to licence a 'late-night pub' (Allen, 2004; Clifton, 2004).

As explained above, the licensing of what where effectively late-night pubs had defined the growth of the NTE in Britain for over a decade. These attempts to achieve 'licensing reform through the backdoor' were now judged to have been based upon fundamental misinterpretations of the law. Yet, the genie was already out of the bottle. Failure to properly apply s77 by ensuring that alcohol consumption was truly ancillary to entertainment and food had contributed to the creation of a drink-based night-time culture:

"The logical extrapolation of the decision would see virtually every late-licence operation in the country close down. It's an obvious fact that customers go to nightclubs and late-licence bars, firstly, to enjoy a few drinks. A substantial number will have a bit of a bop at some stage. A handful will avail themselves of a meal" (Charity, 2004: 13).

To summarize, the relaxation of SHC licensing in recent years has offered potentially lucrative commercial opportunities to those operators who can please the late-night audience. The most potent attempts to stem such growth have been driven by protectionist objectors from within the trade's own ranks, rather than by the police, local authorities or residents. These court cases have served to highlight both the mundane reality of s77 non-compliance and the issue's selective use as a weapon with which to attack one's competitors whenever the spectre of decreased profitability looms. Protectionist litigation led ultimately to a clarification of the law which called into question the entire legal basis for existing forms of de-regulation in the night-time high street.

Creeping Licences

Where local authorities or Justices have placed restrictions upon the operational format of premises, the trade have developed a variety of subtle methods by which to achieve their commercial objectives. Police and local authority informants referred to one popular method known as the 'creeping' licence. This term refers to the process by which the applicant for a 'new build' development or for a variation to the licence of an existing business, submits a proposal which is couched in terms suggestive of a conservative, up-market or family-friendly market orientation in order to offset potential objections and persuade the bench to grant the licence they have applied for (see Chapter 8).[54] Once a licence is granted, the operator then seeks to have conditions forbidding attractions such as a disc jockey, dance-floor, or open-plan furniture-free space, rescinded and markets the venue in a more profitable, youth-oriented manner. As one police licensing officer explained:

"This has not just happened once, but four or five times. We received an application for a brand new public house which was bona fide and we met with the applicant and vetted the applicant and everything is really nice and rosy. We go to court and don't object to the granting of the licence with the condition that those conditions are applied to that licence if granted. So then when it is granted, they go away really happy, 'look at this, we have a licence with all these conditions on!' Two days later, we get an application for a change in those conditions, so why did they accept the conditions when they weren't happy with them?" (Lister et al., 2001:3).

Creeping licensing is particularly apparent in relation to PELs. Over a period of years, a local authority might receive a stream of variation applications pertaining to the same premises. These variations could relate to conditions or to other operational issues such as capacity limits and terminal hours. Some venues get considerably larger and trade

[54] As a police licensing officer quoted in Hobbs et al., (2003: 259) noted "Whenever you get an application they never say this pub is going to be for drunken young people who are just out of school, still chewing gum while drinking from the neck of a bottle and talking about school; they never come to court and say that; they always say, 'well this is a different pub now, it's a different image to all the others you've granted. This is for the more mature, more discerning drinker and look at our wonderful menu'; and it's a load of bollocks basically, and I know that it is at the time. I've been doing this long enough to know the same application done by a different solicitor every time, you know, same keywords, same trigger words and nothing changes."

considerably later over time, transforming from a quiet café or pub to a bustling quasi-nightclub. Although the applicant's ultimate business plan may be to have a 2am licence, a booming sound system and large capacity premises, to submit such proposals all at once would be to 'give the game away.' Thus, it is independent operators, who are less likely than their corporate competitors to have access to an elite legal team, who tend to favour the creeping approach. Creeping can effectively reduce the risk of having one's applications denied. The goal is pursued incrementally by achieving, for example, a 12.00 midnight extension and a small capacity increase one year and 1.00am licence and a further capacity increase the next.

Special Removals

Other tactics included the use of 'special removals' whereby operators were able to open new premises within an established drinking circuit by exploiting a loophole in the Licensing Act 1964 which permitted them virtual immunity from objections. In a number of cities, operators sought to purchase premises holding 'old on-licences' continuously in force since 15 August 1904. Unlike other types of licence, old on-licences could be transferred to any other premises within the same licensing district. These 'special removals' could be made on the grounds that "the premises for which the licence was granted are or are about to be pulled down" or "have been rendered unfit for use for the business carried on there under the licence by fire, tempest or other unforeseen and unavoidable calamity" (Mehigan and Philips, 2003: 2.477). In considering the suitability of an application to transfer the licence to another premise, the licensing committee could "consider only the suitability of the applicant ...and may not take extraneous matters into account" (Philips, 2002: 3.129).

Some operators sought to purchase and stock-pile premises with old on-licences in order to keep a reserve of transferable licences. If a particularly prime site within the same licensing district became available, the operator could then move to purchase the new site in the knowledge that a licence could be obtained without the necessity to consult the local community or public agencies and in the knowledge that a costly legal battle could probably be avoided. In order to apply for a special removal it was also necessary for the

premises which held the old on-licence to be kept in a suitably dilapidated condition and in licensing circles, rumours of strangely enhanced fire risks at pre-1904 properties abounded.

Once it became clear that the Act would make no provision for 'special removals,' operators rushed to cash their stocks of old on-licences. In Newcastle (the site of a number of special removals), licences from some of the City's smallest and oldest pubs were transferred to new premises some distance away. Big bars and even a nightclub in the City's prime Quayside area sprang up on the back of this transfer mechanism. In summer 2003, *Ultimate Leisure* sought to transfer the licence of a city centre pub called the *Frog and Nightgown* which, for a short period of time, the company had been trading as *Mims*. *Mims* was demolished after Newcastle City Council compulsorily purchased the site as part of an urban redevelopment scheme. *Ultimate* applied for a 'special removal' of the *Mims* licence to one of their other properties, the *Gresham* hotel. The *Gresham* was located on Osborne Road, a busy night strip in the upmarket suburb of Jesmond. *Ultimate* sought to re-open the *Gresham* as *Bar Bacca*, a new 1,000 capacity addition to what had become one of Newcastle's main nightlife areas and the 'hottest' alcohol-related crime and disorder hot-spot outside the city centre. Interviewed in the *Guardian*, the local Labour MP Jim Cousins stated that "a secondary market has developed for licences, some worth up to £500,000. People with a very good insider knowledge in the City can use this market greatly to their personal advantage...bringing a process that should be open and above board into disrepute" (Hetherington, (2003b: 5).

The High Court granted five Jesmond residents permission to seek a Judicial Review of the Newcastle Justices' handling of the matter. However, the bid to stop the special removal ended in failure. In his judgement, Mr Justice Owen said that the residents' frustration at the situation on Osbourne Road was "understandable" but there had been no abuse of process by *Ultimate*. The judge refused the 'Jesmond Five' leave to appeal and ordered them to pay £40,000 in interim court costs. The full costs incurred in the case totalled over £500,000 including legal fees on both sides and a claim by *Ultimate* for loss of trade caused by the delay in opening. In an interview with local newspaper *The Journal*, *Ultimate*'s managing director, Bob Senior, said: "We suspect the loss of profits,

in what was the hottest summer on record, will be in the range of £400,000 to £500,000" (Bolam, 2003: 2). Further costs were incurred when the case went back before the magistrates' and the licence was granted. The resident's £58,000 legal fees had been underwritten by rival operators *Rindberg Holding Company*, owners of *Osbornes*, the largest bar on Osbourne Road.

The 'Playing off' of Regulatory Systems

As noted in Chapter 1, the development of the high street has been subject to three primary forms of municipal control: planning; public entertainment licensing (PEL) and liquor licensing. Yet, prior to the Act at least, there was often very little co-ordination or consistency of policy and practice between the various regulatory bodies (Delafons, 1996; Hadfield et al., 2001). As described, applicants would only apply to the Justices for a liquor licence once the two initial hurdles of planning permission and entertainment licensing had been overcome. It was typically assumed that the Justices would look more favourably at applications for which the other two pieces of the jigsaw were already in place (even though the manner in which those pieces had been accumulated would usually remain obscure). Importantly, the Justices' Clerks' *Good Practice Guide* (Op cit) sought to specifically prohibit licensing magistrates from taking into account matters which had previously been considered by a local authority.[55] As described below, this aspect of the Guide created something of a regulatory lacuna which could be exploited by operators and their legal advisors who typically perceived the obtaining of a liquor licence as the biggest obstacle in the process of opening a licensed premise. The following case study describes how particular aspects of the legally distinct- but practically overlapping, planning and licensing systems could be 'played off' against each other to the benefit of applicants and the detriment of objectors:

[55] Paragraphs 1.22 and 3.13. The stated purpose of this recommendation was to "avoid conflict and confusion and to save applicants having unnecessarily to argue the same points before both the committee and the local authority" (1.22). As the Guide goes on to note "...the committee must be careful not to trespass into areas for which the local authority is statutorily responsible, for example, planning...Applicants should not be required to debate issues which have already been addressed and determined by the local authority" (3.13).

A major national leisure chain applied to the Magistrates' Court for a new SHC in order to develop the site of a former cinema. The relevant planning permission and public entertainment licensing had already been obtained. The history of the planning application was, however, somewhat murky. As a long disused cinema, the development site had retained a D2 Use Class. Put simply, this meant that the building had already been designated a broad land use planning classification which incorporated both cinemas and nightclubs, therefore it would have been possible for the applicants to convert the premises into a nightclub without obtaining any further planning permission. However, the applicant's aspirations for the premises involved the opening of one of their successful branded bars. This required an application for a change of use of the building from the D2 to the A3 (food and drink) planning category. At the planning hearing the applicant's lawyers curtly presented the local residents who were objecting to the granting of such planning permission with a stark choice: would they prefer to live near to a 'nice sophisticated bar, serving food' which therefore required a change of use to A3, or next door to a new nightclub, the plans for which could be drawn up immediately without further recourse to the planning process. In later submissions to the liquor licensing bench, the same lawyers made much of the fact that the applicant's proposals for the site had already been approved by the council's planning department and had therefore been deemed a suitable location for the development. In a report to the court commissioned by the local police I attempted to challenge this assertion by recounting the methods through which the planning permission had been obtained. Counsel for the applicant successfully argued for the removal of these 'offending paragraphs' citing the provisions of the Good Practice Guide.

By such means, applicants were able to 'slip through' the regulatory net, using the incoherence and complexity of the various municipal control systems to their own advantage. The ability of specialist lawyers to exploit the system through ad hoc opportunism highlights the lack of co-ordination within and between regulatory bodies and the failure to develop a strategic plan for sustainable development of the NTE.

Deals, Concessions, and Voluntary 'Pollution Levies'

In Chapter 8 I describe how applicants will often attempt to establish their 'Corporate Socially Responsibility' (CSP) credentials by offering a range of proposals to assist crime reduction. For present purposes, it should be noted that such proposals may be made in the hope of avoiding court proceedings altogether. In one instance I learnt that the owners of a large estate of licensed premises in Central London had negotiated a deal with the City of Westminster involving the closure or cutting back of business at certain sites in return for permission to develop and expand their business elsewhere. The more common scenario is for an applicant to seek an agreement involving the dropping of objections to the opening of a new venue in exchange for some form of voluntary contribution to the local crime prevention budget. Such initiatives typically take the form of target hardening or manned security technologies (see Hadfield and contributors, 2005a; 2005b). As the following case notes illustrate, problems can occur in circumstances where one group of objectors decides to 'take the bait' against the wishes of others:

In 2002 a national leisure chain announced plans to develop the site of a former supermarket in Macclesfield, a market town in North West England. The application was for a new 8,000 sq ft, 700-capacity branded bar with a late licence. The site was awarded planning permission for change of use and also a PEL by the local authority despite opposition from the police and local residents on the grounds of saturation. Police in the area were experiencing particular problems as the town's police station had no cell space and each arrestee had to be processed 10 miles away in Wilmslow taking officers off the street for considerable periods. At the hearing of the council's licensing committee, a local Chief Inspector alluded to the problems caused by this shortage of manpower, stating that his officers were "actually scared sometimes because they are vulnerable in the street." During the PEL hearing, the bar chain offered the police and local authority £15,000 over a three year period for CCTV and other policing aid including installation of extra street lighting and the company's help in setting up a pub watch scheme (see Hadfield and contributors, 2005a). The PEL was granted and the company's proposals accepted pending the grant of a liquor licence by the magistrates' court. At this stage, the identities of all the objectors were known and legal

representatives of the applicants took the unusual step of making personal telephone calls to opponents at their homes. Even more surprisingly, Macclesfield police did likewise advising objectors that they (the police) no longer intended to oppose the application as the assurances given by the applicant at the PEL hearing had negated their concerns. The residential objectors decided to stand their ground and fight the case on their own without legal representation. Despite the police U-turn, the objectors won the case and the magistrates refused the licence. The applicants immediately appealed the magistrates' decision and the case was reheard in a Crown Court 40 miles away. The residents made an emotional appeal to the court and presented video evidence which showed the aftermath of a weekend night in the town centre. One witness described how she had seen two men and a girl performing' indecent acts' against the wall of her house and how one of them had left his trousers in her garden. Despite the objector's protests, the court granted the applicants a1am SHC, thus allowing the development to proceed.

As the above case demonstrates, the making of concessions and striking of deals may help applicants to divide and conquer their opponents. Given the stance of the police and local authority, many residential objectors would have capitulated in the face of an intimidating, time-consuming and potentially costly legal battle (see Chapter 7). The applicants would then be in a win-win situation as any monies contributed to the crime reduction budget would likely be considerably less than the legal costs they might otherwise have incurred. Such approaches share much in common with the notion of 'planning gain' wherein, "companies can, quite legitimately, give money or benefits in kind to a local authority as a condition of receiving planning permission" (Monbiot, 2000: 132). This wheeling and dealing can be understood as a tactic used by the trade to get enforcement and regulatory agencies 'on side' whilst securing their commercially all-important on-circuit sites. Such offers involve the application of a rather skewed logic, expressed along the lines of: 'we probably will pollute your environment, but don't worry because we'll help you clear up afterwards.'

Commercial Implications of Over-Concentration

"Commercialization of recreational activities tends almost invariably in the competition for patronage, to increase the emphasis upon stimulation" (Burgess, 1932: xiv)

Whilst nightlife destination zones carry a market premium, new development cannot proceed indefinitely. Gradually a point is reached in which areas become commercially saturated. Yet, the pecuniary imperative does not mysteriously dissolve once venues begin to trade. Commercial saturation (which, I argue, is distinct from, but often contemporaneous with, environmental 'overload,' see Elvins and Hadfield, 2003) is reached at a stage wherein competing operators are forced to compromise their preferred business profiles in relation to issues such as admission and drinks pricing policies in order to maintain profitability. The best way for operators to avoid this destructive scenario is to offer a niche product characterized by some form of cultural (typically music-policy and/or design-based) distinction or exclusivity. However, premium niche markets tend to develop on 'secondary circuits' and can be almost impossible to access once one is located within a mainstream, chain-brand dominated and alcohol-fuelled disorder hot-spot with a negative public image (see Hadfield and contributors, 2005a; Hobbs et al., 2003: 259-261 for related discussions).

Competitive pressure has, in some areas, encouraged drinks' price wars, with two-for-one promotions and other bait being used to get people through the doors and keep the tills ringing. This has been linked to increased levels of alcohol consumption and consequent disorder. Appendix A describes the case of Broad Street in Birmingham.

Summary

This chapter has charted the rise of the contemporary late-night leisure market in Britain's high streets. It has shown how business expansion was facilitated by a number of political and regulatory shifts and also by changes in commercial practices which favoured the development of branded venues within central urban locations. The chapter recounted how exploitation of the night's economic potential involved the suppression

and cultural desecration of an influential youth movement which rejected alcohol in favour of other types of drug, and how specific tactics were developed by the trade and their legal representatives to successfully navigate the regulatory terrain and secure prized development sites. De-regulation occurred incrementally through a series of legislative 'back doors' long before the Act was passed, and may have served to pre-empt much of its potential impact. Lack of strategic vision and an absence of will, know-how and financial muscle militated against the type of pro-active regulation necessary to achieve ambitious plans for diversity, social inclusion and public safety. With competing attractions and regulatory restraints removed, the leisure industry was freed to pursue its strategy of profit maximization; a course which increasingly led to fighting within its own ranks. This intra-trade rivalry involved attempts to gain or retain commercial advantage through selective manipulation of the regulatory system and, latterly, through the waging of price wars to protect profits and market share. In the chapters which follow I describe the social environments that these market processes have helped to forge and the informal/indigenous and formal/externally-imposed modes of social control pertaining within them.

Part II

The Contemporary Environment

Chapter 5

Behind Bars: Social Control in Licensed Premises

This chapter explores various ways in which the operators of licensed premises attempt to exert control over their customers. The research refers exclusively to venues located within British urban centres. Venues were drawn from a broad range of trading formats, ranging from hybrid drinking/dancing/eating establishments within the contemporary bar sector to public houses and nightclubs of a more traditional aesthetic. My analysis is informed by interviews with managers/licensees, bar and floor staff, disc jockeys (DJs) and others working within licensed premises, together with participant observation - including retrospective insight gleaned in the course of my experience as a working DJ.

In *Bouncers*, my colleagues and I described how door staff applied discretion, selecting only those customers they perceived to be compatible with the venue's particular niche within a socially stratified leisure market (Hobbs et al., 2003: 136-8). One issue that was insufficiently explored was the extent to which controls were applied, and applied strategically and diffusely, to the behaviour of those customers who did gain entry. I begin by briefly acknowledging the role played by physical constituents of the control agenda, before addressing the central concerns of this chapter: proactive operational techniques for manipulating the social environment.[56]

Physical Aspects of Control

"The lounge is a large comfortable room with decorations such as to be found in any Worktown home...a better home than the ordinary worker's home...one of cleanliness, ashtrays, no random saliva, few or no spittoons" (Mass Observation, 1943: 106).

[56] The analysis I present is unavoidably partial as it attends only sparsely to ways in which the pharmacological effects of alcohol and other intoxicants may contribute to acts of aggression and contested control situations. Readers are referred to other work which provides a review of knowledge in these areas (Graham et al., 2000; Hadfield and contributors, 2005a; Lipsey et al., 1997).

Research suggests that the physical environment within licensed premises may create expectations with regard to the acceptability of aggression and violence (Graham and Homel, 1997; Leather and Lawrence, 1995). Graham et al. (1980), for example, found higher levels of physical aggression in unattractive, poorly maintained and inexpensively furnished premises. Conversely, of course, it may be hypothesized that higher standards of décor and cleanliness might reduce expectations of aggression. Informants spoke of the high volume of cleaning and maintenance work involved in operating a venue and the ongoing importance of this work in presenting their businesses to the public.

MCM Research (1990: 30-31) found that pubs with an open-plan design had a greater frequency of fights amongst customers than those of a more 'traditional,' physically segregated format. The authors note that in choosing between open-plan or segmented design, there is a need to balance several conflicting concerns. Although, open-plan designs assist in the surveillance and monitoring of customers by removing potential blind spots (whilst offering the "additional benefit of increased trading space"), the open-plan format can also make it more likely that any aggressive behaviour will spread throughout the venue.

Such concerns point to the heightened risks of conflict associated with Mass Volume Vertical Drinking (MVVD), a term used in marketing circles to denote premises designed in such a way as to accommodate large numbers of customers who stand with drink-in-hand, in a crowded, open-plan space. Open-plan space can be a key component of the high street venue's appeal as the clustering of patrons "increases the likelihood that sociability among the unacquainted will ensue" (Cavan, 1966: 97). As Cavan noted in 1960s' San Francisco, customers within urban bars have a tendency to converge within "milling areas" which consist of "an open-plan space in the general vicinity of the physical bar." This practice occurs "regardless of whether there are seats at or away from the bar available to them" (ibid: 101).

As a crime reduction measure, MCM Research (Op cit) recommend the use of partitioning with distinctive lighting and décor in different areas; the installation of fixed furniture and semi-transparent screens, all of which serve to physically and

psychologically separate different groups of people. Such design features allow management and staff to retain effective 'sight lines' throughout the venue, whilst at the same time, discouraging customers from paying attention to other people's behaviour and reducing the need for them to come into physical contact with other people's property or persons.

The avoidance of 'blind spots' is important in preventing covert activities such as drug dealing and the monitoring of secluded areas and entrances can be assisted by the use of lighting techniques and Closed Circuit Television (CCTV). Design features can be used to provide an unobstructed view of entrances and exits, toilet entrances and other potential flashpoints such as pool tables and amusement machines. Raising the bar area can assist surveillance, but interior designers will often seek to avoid creating elevated spaces that may serve as "poser platforms" for customers (St. John-Brooks, 1998: 35). St. John-Brooks (ibid: 35-36) note the importance of restricted access to private spaces such as kitchens, offices and living quarters.

The use of tempered glassware is increasingly regarded as an important design feature, reducing the risk of injury sustained in assaults and accidental breakages (Plant et al. 1994; Shepherd, 1994). Informants stressed the need for floor staff to clean up breakages and spillages of drinking vessels as soon as possible, and as a preventative measure, to make regular collections of 'empties.'

Environmental Stressors

"Treat people like animals and they will respond in kind" (industry maxim)

Research in Canada and Australia has associated aggression in licensed premises with discomfort, inconvenient bar access, inadequate seating, high noise levels, high temperatures, poor ventilation, smoky air, and cramped and overcrowded conditions (Graham et al., 1980; Graham, 1985; Homel and Clark, 1994; Macintyre and Homel, 1997). These factors appear to act as environmental stressors which irritate, frustrate or otherwise provoke aggressive behaviour amongst customers, particularly those who are

intoxicated (Graham and Homel, 1997: 174; MCM Research, 1990). Although they arise in relation to physical aspects of the drinking situation, environmental stressors interact with, and are partially constitutive of, the social environment one finds within licensed premises. Homel et al. (1992: 687), for example, note how customers sought to "alleviate their discomfort by more rapid drinking" giving rise to "higher levels of drunkenness and eventually aggressive reactions to discomfort directed at individuals and property." Other important stressors relate to customer occupancy levels and the use of lighting:

Overcrowding

Macintyre and Homel's (1997) study conducted in six Australian nightclubs examined people's experience of crowding as a form of "sensory and social overload" and its relationship to perceived violations of their "personal space." High levels of aggression were found in environments where the concentration of patrons was such that they regularly bumped into each other, sometimes spilling drinks. Such problems were exacerbated by poor physical design which gave rise to intersecting flows of customers en route to the bars, toilets, dance floors and entry and exit doors. These findings suggest that attempts to 'design out' aggression within premises should involve anticipation of customer flow patterns and likely points of convergence. The careful positioning of pool tables, amusement machines, sofas and dining furniture, for example, may help to minimize the risks of unintended physical contact. Overcrowding can also reduce the effectiveness of CCTV and the general ability of staff to exercise control over a variety of problems such as theft, pick pocketing and vandalism.

On high street circuits there is a focus on efficiently processing the large crowds that descend upon the area during weekends and at night. Informants spoke of the need to monitor both the total number of people within the premises and also occupancy levels within each individual area:

"On a Saturday night we will have about 3500-4000 people go through the door, so that's 8000 journeys on one narrow staircase, which is a lot, and we always see our stairs as our big flashpoint; it's the one thing that we've got to get right... We use the DJ to tell people

to move down to the extremities of the building to give new people coming in and people around the bar some more space...then it's down to the doormen to limit the people coming in...We do that by a simple system of clickers: one doorman clicks in, one doorman clicks out. We don't do one in and one out, we wait till twenty have gone, then let twenty in, because you have to give people chance to come up the stairs and blend in with the crowd" (Ken, independent bar owner).

At the bar, service must be efficient in order to minimize frustration amongst waiting customers. Bars need to be well staffed and fully stocked in anticipation of the influx of people during peak trading periods. As well as assisting in crowd control, these techniques can have a significant impact upon profitability, as venues may generate the vast majority of their weekly income within a few short hours of night-time trading.

Lighting

Lighting is a physical design feature that can make an important contribution to the manipulation of social atmosphere within licensed premises. St. John-Brooks (1998) suggests the need to avoid extremes: very brightly coloured lighting and décor can be a visual irritant and/or induce over-stimulation, whilst dim lighting can make surveillance difficult. Some premises vary their lighting policies in order to reflect the differential security issues arising during particular trading periods. On 'Dance nights,' for example, where there is an enhanced risk of surreptitious drug-related activity, the dance floor area may be kept dark, but additional lighting used to illuminate obscure areas of the venue. Similarly, on mainstream 'party' nights, where greater levels of alcohol consumption and aggression are found, rapidly moving and disorientating lighting effects such as strobe and smoke may be avoided. Many larger venues employ a dedicated lighting jockey to manipulate lighting effects with an eye toward both social control, and the creation of an interesting and constantly mutating audio-visual experience.

Having examined a number of ways in which features of the physical environment may be used to exert control over patron behaviour, I shall now discuss various concordant managerial techniques.

Social Aspects of Control

"At one end of the social scale we find chaps (sic) spitting all over the place, often where there is nothing for them to spit into, while in better class pubs and rooms, there are receptacles for spit into which no one does spit" (Mass Observation, 1943: 204).

In order to inform our understanding of social interaction and control within the night-time high street, it is initially helpful to contrast the setting with other contexts of public drinking in which incidents of aggression and violence are comparatively rare.

Informal Social Control and the 'Fellowship of Drinkers'

"It's a local in the town centre. This pub is self-regulating, so we don't really have any trouble" (Tony, licensee)

The traditional English pub, as described in Mass Observation's (1943) famous study of 1930s Bolton, was a facility serving the needs of largely static and geographically confined communities (also, see Vasey, 1990: Chp. 6). Such pubs, to this day, continue to function as what Oldenburg (1997) describes as a "third place" or "great good place," an environment in which people meet and socialize outside of their homes (first places) or locations of work (second places) (see Kingsdale, 1973). Within such environments, people enjoy the company of others whom they know, whilst also encountering 'strangers.' Relationships between customers and staff may be intimate (Mass Observation, Op cit. 133-4; Ritzer, 2004: 42-3) and involve active co-operation, with customers being willing to help out in various ways (Cavan, 1966: 231-3). For staff, there is often little distinction to be drawn between work and social life and those who no longer work behind the bar may return to socialize with former colleagues and customers (LeMasters, 1975; Marshall, 1986). Although there will usually be no formal criteria for admission, camaraderie between "regulars" (Katovich and Reese, 1987) may afford some sense of attachment or belonging (LeMasters, 1975).

Anthropological research indicates that drinking practices are notable for their historical and cultural specificity, with drinking styles and associated behaviours being learnt through processes of socialization and initiation (Heath, 2000; MacAndrew and Edgerton, 1969). Until quite recently, barroom environments in Britain might typically have been bastions of exclusively *male* sociability, from which women were effectively excluded (Hey, 1986; Rogers, 1988). These themes have been explored by a number of sociologists, who argue that in working class industrial areas, for example, pubs and bars historically functioned as social institutions in which older men taught their younger male apprentices 'how to handle their drink' (Dorn, 1983; Gofton, 1990; Kingsdale, 1973). Within this masculinist tradition, introductions from regulars and the serving of an apprenticeship in "drunken comportment" (MacAndrew and Edgerton, 1969) allowed consecutive generations of drinkers to be assimilated into the 'insider' group (Katovich and Reese, 1987). As Mike told me:

"If you're strict at sixteen, seventeen and don't let them in, they're not going to come in when they are of age. We start getting a few when they are a little bit older. They might start comin' in with older people from work and decide that *The Dog* is alright for a few pints. They tell their mates 'why pay three quid a bottle when you can have a few pints here?' So you make money that way and you keep that customer for life" (Assistant Manager, city centre pub)

In sociological accounts of the traditional pub, the publican is typically identified as the 'host' of a valued community facility; a well-known male authority figure, acutely aware of local gossip, antagonisms and rivalries, and capable of identifying and dealing informally with most fractious situations (Mass Observation, 1943; Vasey, 1990). Such establishments have no designated security staff, but if people do behave anti-socially or become aggressive or violent when in drink, the licensee may know their names, addresses, occupation, and family connections. In such community contexts, the risk of gossip and tarnished reputation can exert a powerful calming influence (LeMasters, 1975; Roberts, 1971).

Remnants of these informal methods of social control may often be found where licensed premises continue to serve the needs of a largely regular and predictable consumer base. Even in urban centres, one can still find pubs which operate in this way, being physically and/or culturally and aesthetically removed from the main drinking circuits. Although ostensibly open to all, these more traditional pubs are often of little appeal to the (mostly) younger crowds of "action" seekers (Cloyd, 1976). As a barman at one such establishment put it:

"We are off the loop. We've had more strangers in since they opened the *Havana* bar up the road, but mostly, it's the same faces. We don't get the youngsters and the big groups and even when we do, they only come in here for one drink anyway 'cos it's not lively enough for 'em. We're not like a bottle bar where they just go in for bottles and shooters, y'know, we're like for pints and we get the older women from thirty onwards. The young lads, they want to go where there's the younger girls; y'know, with the short skirts" Jim

In the following paragraphs, I adopt the term 'regulars' venue' to refer to those premises in which control over key aspects of activity, behaviour and social atmosphere is shared between staff and the businesses' core clientele who exercise "territoriality" with regard to the venue (Cavan, 1963, 1966; Katovich and Reese, 1987; LeMasters, 1973; Lyman and Scott, 1967). Within such venues there may be implicit rules regarding the maintenance of light-hearted conviviality, such as the avoidance of serious and potentially divisive and inflammatory conversational topics like politics and religion (Cavan, 1966; Mass Observation, 1943; Vasey, 1990). Moreover, the relatively 'thick' social bonds between regulars may perform a protective function with regard to unwelcome and challenging intrusions by transient visitors.[57] To this extent, "habitués treat the bar as though it 'belonged' to them, as though it were no longer within the domain of *public* drinking places (Cavan, 1966: 211). As Mass Observation (Op cit: 106) observed: "Casuals are somewhat resented if they drop into the tap-room. It would be bad

[57] For example, as public drinking places, bars are environments in which women may be the subject of unwanted advances from men (see Snow et al., 1991), the status of regular or friend of the regulars may allow women to feel more comfortable and relaxed in their interactions with male strangers (Parks et al., 1998).

form for a stranger to go in there for a drink. And he would probably notice that the regulars were not very pleased to see him."

Territoriality may be exercised differentially in relation to particular areas of the premises, with distinct groups of regulars claiming ownership over specific territories (Hobbs, 1988; Roebuck and Frese, 1976). This spatial differentiation may reflect the existence of complex social hierarchies and interrelationships between regulars (Katovich and Reese, 1987) contributing to the creation of a "rigidly stratified institution" (Hobbs, ibid: 142-3), largely impenetrable to the outsider.

If staff-customer control situations are contested and threaten to get out of hand, staff may call upon and/or involuntarily receive, assistance from regulars. Such venues are therefore, to large degree, self-policing. In some instances, "turf defence" (Gottlieb, 1957; Lyman and Scott, 1967) operates largely through word of mouth, as the premises and its clientele have a sufficiently 'rough' reputation to intimidate and deter the transient visitor, including potential troublemakers:

"Kids on the town don't cause us problems, they wouldn't *dare*. A lot of the older people would have no hesitation in telling them to calm down. We have a lot of big regulars, y'know, who have a presence about them, who would have a word... because the last thing they want is a ban on somewhere they like to drink" Steve (Barman, regulars' venue)

These informal social control mechanisms and the general predictability of the environment allow many regulars' venues to eschew formal admissions criteria and the use of door staff. Customers who appear to be of legal drinking age, even those who may be "rough-looking" are "given the benefit of the doubt" and "treated as they are found" within a space which is ostensibly open to all who "behave themselves." However, as Cavan (1963: 21) notes:

"The home territory character of any bar is dependent upon the indigenous population's ability to control the presence of outsiders. The problem for those who define and utilize

a public drinking place as a home territory is the problem of handling outsiders who may attend to the bar in terms of its apparent public character."

Under certain circumstances, the indigenous group's attempts to exercise territoriality may break down due to the 'swamping' of the venue by outsiders whose actions cannot be effectively controlled:

"There was a match day last year which attracted a big hooligan element shall we say...A group of thirty lads, just going round drinking at all the bars and wearing the colours; of course, when the match disgorged, it was them versus the supporters. A chap staggers in and says 'can I get a drink?' and I say 'no way, you're too drunk, sit in the corner with a glass of water.' I say to his mates, 'you can have a drink 'cos you're all right, but he's not getting any.' Of course, they're trying to give him a drink and the touch paper was lit, they wanted a fight and it just went 'boof!' They're turning us over. So there's me and one of my bar men getting him out and they turn on us. Course, y'know, black eyes, bruising, shall we say, and we had to defend ourselves to a certain extent. The police were called, but by the time they arrived they'd been and gone. We had four staff and there were thirty of them. Some of the regulars tried to help us but they got hurt too. So my philosophy now is stand well back, we don't really want everyone involved, we don't want our regulars getting injured" John (Manager regulars' venue)

The potential risk of swamping goes some way to inform the choice of whether or not to employ door staff. In venues located on or near a high street drinking circuit, this threat may be very real.

Enter the High Street

"I used to work in a bar on Bile Street. If there was a fight, the customers would just turn away, wouldn't lift a finger" Esther (Bartender, regulars' venue)

Paul Cressey's *The Taxi-Dance Hall: A Sociological Study in Commercialized Recreation and City Life* (1932), an investigation of the Chicago dance halls of the 1920s,

can be regarded as a seminal ethnography of the urban NTE. In his concluding chapter, Cressey explains the import of the book's subtitle:

"In the last analysis, the problem of the taxi-dance hall[58] can be regarded as the problem of the modern city...There is, first of all, mobility, impersonality, and anonymity...The taxi-dance hall also reflects in the extreme, the commercialism and utilitarian considerations which characterize the city. In it even romance is sold on the bargain counter...Moreover, in the transient contacts of the ballroom one feels no personal responsibility for the conduct of strangers seen there. As a result, any effective control which is exercised must be formally imposed from without, either by the manager himself or by others whose interest is in civic welfare. Thus the informal social control arising naturally and without special concern in the village situation must be supplanted in the urban dance hall by formal regulations, by institutionalized methods of supervision, and by systems of control imposed forcefully and externally upon the dance hall patrons" (287-289).

Cressey's analysis retains contemporary relevance as it echoes in the comparisons that may be drawn between regulars' venues and premises which occupy the high street drinking circuit. On the high street, the mix of people is dynamic and intoxicated strangers from a variety of areas intermingle. Although high street businesses may establish some form of rapport with their customers - through brand identity, at least (see Chapter 4) - the service of an indigenous population is necessarily supplanted by the manipulation of largely anonymous and transient crowds. High street premises serve a discrete social function to that of the regulars' venue; one in which the sociability of neighbourhood and work gives way to the search for excitement, sexual encounter and spectacle (Cloyd, 1976) within a context of conspicuous and often exaggerated consumption (Brain, 2000). These conditions discourage meaningful interaction between customers and staff. Even though the same customers may attend week in, week out,

[58] Taxi-dance halls were ballrooms in which men paid to dance with young women: "like the taxi driver with his cab, she is for public hire and is paid in proportion to the time spent and the services rendered" (p.3). The proceeds were split between the operators of the premises and the dancers. The dance halls were the source of moral outrage within sections of middle class American society due to anxieties regarding promiscuity and female emancipation (see, Burgess, 1932; Dubin, 1983).

relationships remain superficial and deeper social attachments are never formed (Katovich and Reese, 1987):

PH: Do you get many regulars?

"Yes, but I have no personal relationship with them. It'll just be a 'hi, y'alright?' behind the bar, because you're busy. They'll stop for a couple of drinks and next Friday they are back in again. It's really difficult to know where they come from and where else they go, cos you haven't got time to talk to them" Tim (Barman, high street bar)

Circuit venues, especially those situated some distance from shopping and business facilities are often closed during the day-time and the 'quietest' nights of the week. This mono-functionality acts to further sever the link between venues and their host communities by militating against the acquisition of regulars.

The operating practices of high street venues were criticised by off-circuit licensees for creating bad publicity for the licensed trade as a whole. This critique had a number of coherent themes including the discounting of drinks, the serving of underage or highly intoxicated customers, and a generally irresponsible business ethos skewed towards the maximization of profit. The following comments were typical:

"At *Flames* on Brand Street you'd get targets to meet and bonuses on drinks' sales and the area manager would just come in on a Monday morning, never at night, and just say 'what were your takings? Did you make a lot of money? He'd never say 'was there any trouble?, or 'what type of punters did you get in?' Down there you just play the loudest music, get as many people in as you can. Just keep your head down, keep selling the bottles, don't talk to people" Becky (Manager, regular's pub)

High Street Venues and the Imposition of Formal Control

Commercial exploitation of the high street leisure market has involved the concurrent development of formal and regularized modes of control. The co-operative and mutually

supportive activities required to impose and maintain consistent operational practice allow staff to feel more secure in what can be a frantic working environment. Moreover, these 'rules of the house' play an important commercial role in ensuring that "unruly elements" are not allowed to encroach in ways that could be bad for business. Yet, high street venues do not always adhere to the dictates of 'company policy' and even when they do, such policies will often sanction hedonistic behaviour, that within a more traditional pub setting, "your regulars wouldn't stand for."[59] The formal social controls brought to the fore within high street premises have generally less disciplinary efficacy than the informal social controls exerted by regulars. Paradoxically therefore, the greater behavioural latitude to be found within high street premises requires that the open-door policy of the regulars' venue, in which all customers are 'assumed innocent until proven guilty,' is replaced by more strict criteria for admission.

Admissions

In high street venues, admissions procedures become perhaps the single most important aspect of security. As Hobbs et al., note: "control of the door is a vital first principle if the decorum of customers is to be influenced. For once customers enter the premises, policing them is far more difficult" (ibid: 120). Although security staff will typically be dispersed throughout the premises, the majority of them will be positioned at the main entrance to the premises. The manager may also stand in this area to meet and greet and to ensure that the door team are working in accordance with instructions. The 'front of house' represents a "checkpoint or filter" through which potential customers must pass whilst their 'credentials' are evaluated (Monaghan, 2002a: 412). This customer selection process can be understood as a form of opportunity reduction *par excellence*:

"In the queue you are looking for people to stand in a way that is reasonably well behaved, you are trying to prevent people from joining the queue who are not suitable so

[59] *Yates' Plc*, for example, recently installed steel dancing poles in venues throughout their national estate. These fixtures have been placed in dance floor areas to afford customers the opportunity to engage in impromptu 'pole dancing.' As in many other high street venues, live video images of dancing customers are shown on plasma screens throughout the venue. This footage is interspersed with music videos and details of drinks promotions. These features permit high street operators to use the sexual allure of their own customers as a sales promotion device.

you don't get as many knock backs at the front door. When they do get to the door obviously you are selecting people on age making sure they are not intoxicated and no signs of drug usage and the manner in which people dress. It is vital that the people who are working the front door know the type of clientele that we expect inside. We are trying to keep people who are not likely to mix well together, separate. There is no point having like a football hooligan-type mentality crowd in an environment which is dance-focused and who would fit in better in a place which plays party music. You need to select people of a similar mindset who have a certain empathy with each other, again, to prevent public order situations. You may have to conduct searches and detain people found with any illegal substances or concealed weapons etc" Mike (Nightclub Manager)

Door staff and management regard the retention of discretion as paramount, being intimately connected to personal authority, niche marketing of the venue, and the protection of property and persons. Thus, as the nightlife legend goes, "management reserve the right to refuse admission."

Social Control and the Pleasure Professional

"I hope I help make people feel happy, get them drunk and giggly and get them laid. Jokin' aside, that is what I hope we do" Kevin (Owner/Operator, independent bar)

Once inside the premises, customers are encouraged to relax and enjoy themselves; indeed, it is essential for venues to provide pleasurable experiences for their customers. Classic barroom ethnographies note an atmosphere of levity and "social licentiousness" (Cavan, 1966:236; Goffman, 1963: 126-127; LeMasters, 1973; Roebuck and Frese, 1976) in which consumers purchase not only alcohol and entertainment, but more importantly, the shared experience of time-out. Thus, "behaviour which is permissible or constitutes no more than normal trouble in the bar encompasses a broad range of activities that are often open to sanction in other, more serious public settings" (Cavan, 1966: 67). As Neil, the Manager of a high street pub explains:

"You try not to be too dictatorial and you need to be tolerant of people. People come in for a good time and I want them to have one. You've got to think, 'well they are away from home, probably been on the drink all day, having a bit of a play-time' and after a while you say, 'right, enough's enough!' and they'll quite happily accept that. I'm not going to say, 'well there's no play-time.' Like, if they are up at the bar shoutin' and singin' and it's full- that's immaterial; but it's just when they are fightin' or they are shouting and being noisy when the bar is empty, then I would need to say something to them. I just say, 'you've had your five minutes play-time and you're back in class now."

There are, of course, pleasures to be enjoyed by the controller as well as the controlled. Staff teams within high street venues usually consist of young, sociable and outgoing people who enjoy interacting with others. The working environment provides a good source of anecdotes and staff may often form friendships and go clubbing together at the end of their shift. For groups of young people such as students who may not have a lot of money to spend, bar work can provide an opportunity to earn money whilst enjoying the atmosphere of premises they might otherwise choose to visit as customers. In successful premises, staff and customers will feed off each other's energy and enthusiasm. Busy venues can be exciting and many people enjoy being part of a large crowd. The intensity of experience on a "good night" draws in customers, staff and management alike:

"I enjoy the buzz of here, the adrenalin of a choca bar, five deep at the bar and six staff runnin' around, it's great, it's lush, y'know, with everyone singin' along to 'Hi Ho Silver Lining.' You'd like to have a few pints and join in yourself" Lenny (Manager, chain bar)

Yet, the ready opportunities for pleasure - intensified in various ways by control over the means of pleasure production - require considerable degrees of self-discipline. Members of staff are part of a *team* charged with the performance of responsible *work* tasks. The working environment is one of heightened risk and there may be considerable personal and financial costs associated with 'getting it wrong,' which may increase incrementally according to the physical capacity of the premises. It is a key task of all members of staff (not only management and security) to ensure that both they, and their customers, are able to enjoy themselves, but within limits (see, for example Roebuck and Frese, 1976:

Chp 7). Exerting control over the pleasure of others requires abstinence, or at least restraint, in relation to one's own consumption of intoxicants; the artful negotiation of sexual opportunities (Monaghan, 2002c; Roebuck and Frese, 1976); the curbing of creative (Becker, 1963) or aggressive urges; the avoidance of overt favouritism; the balancing of familiarity and authority; and the strict management of time. As the following paragraphs explain, this ability to remain 'in control' of oneself and others is regarded as a prerequisite of professional conduct and entails three key constituents: vigilance; manipulation of mood; and the management and diffusion of conflict.

Vigilance

"You're just watchin' all the time" (Peter, Assistant Manager high street pub)

Most incidents of aggression and violence within licensed premises do not occur spontaneously, but rather develop via a process of escalation. All members of staff therefore need to be vigilant, actively monitoring the atmosphere within the premises to ensure that, whenever possible, any potential problems are detected at an early stage. Early intervention serves to minimize conflict and increase the likelihood that matters can be resolved peacefully and unobtrusively. Experienced staff spoke of the importance of knowing what to look for:

"People chatting and laughing and listening to music an' carrin' on is different to people arguing...You can see a lot of people lookin' in the same direction, people movin' away from an area." Lynne (Bar Tender high street pub)

As Monaghan notes, security staff are "usually situated individually at various strategic and often highly visible surveillance points...the top of stairs, close to bars and on balconies overlooking bars, dance floors and other populated spaces" (2002a: 413). The mere presence of a uniformed staff member was felt to reassure customers and remind potential troublemakers that their activities were being monitored. Furthermore, in what can be a crowded and confusing environment, ease of identification was seen as an aid to

customers who might need to request assistance or wished to report any incidents they had witnessed.

Door staff and management interspersed periods of static surveillance with patrolling activities which might involve checking toilets, clearing congestion at access points and stairways and observing the mood of customers in different areas:

"On a night instead of serving behind the bar so much I'm out collecting the glasses. You can go round every table and see who's sitting there and just keep an eye on things, any potential drug problems or arguments, who's had too much to drink and just takings things away so they can't be used as weapons, it's just basic things. Anyone watching might think 'what you doing that for?', but it's just a case of years and years of experience, just clear things away and know what's going on and the potential's not there" Jim (Manager high street pub)

Such unobtrusive attentiveness to the apparently trivial minutiae of every-night interaction is not merely a characteristic of the managerial or dedicated security role. Bar and floor staff regularly move amongst customers in order to collect glasses or take customer orders and are therefore well placed to contribute to such proactive monitoring. DJs will often work from raised consoles that act as vantage points. As we shall see, this physical location, combined with the highly reflexive nature of their work - which involves the constant scanning, assessment and manipulation of the mood of the crowd - can place the DJ at the heart of the venue's combined control strategy.

Policing the Limits of Intoxication

"It's always the drunk ones, it's the people who have been on the piss, have a few more in here and then they get aggressive" Les (Nightclub Bar Manager)

As Prus (1983: 462) notes, it is expected that people will drink, but "not too much." "Actual levels of intoxication tolerated at bars vary considerably," however "when people disrupt or threaten other patrons, become incomprehensible or otherwise lose control of

their bodies" (ibid) a line may need to be drawn. The issue becomes one of a duty of care, toward the individual drinker and to other customers and members of staff. It is the role of the staff team, and especially of management, to monitor intoxicated comportment and use their professional discretion to determine and impose 'cut off points' beyond which further service will be denied and/or a patron asked to leave.

Staff vigilance is also important in relation to drug-related issues. Drugs awareness incorporates the need for staff to be able to recognize illegal substances and signs of their use, together with health and safety issues relating to customers who may be suffering from the effects of drug ingestion (DPAS, 2002; Walker, 2001b). Drugs awareness also involves vigilance in relation to criminal activities such as drug dealing, the spiking of drinks and use of so-called 'date-rape' drugs such as Rohypnol. Informants spoke of a particular need to monitor activities in and around toilets:

"If there's three or four lads and they're all going to the toilet together (laughs), y'know what I mean? it's very unlikely that they all gonna need the toilet at exactly the same time, so you just go and have a look, walk in, just use the toilet, make them feel uncomfortable...and it's taking the toilet seats off and things like that; your toilet roll holders, making sure they're not flat topped, they are tilted, and there's grooves in the toilet roll holder so there's no flat surface. Make sure hand dryers are head height so they can't snort off it, put Vaseline on the surfaces so the powder will stick to it. Check for this, check for that; if it's an easy place to go, they'll use it - so you need to make things difficult" Ken (Manager high street bar)

Some venues seek to enhance guardianship and surveillance by placing attendants in toilet areas.

Communication

"Everybody's watching out for everyone else instead of just one person trying to watch over the whole place, 'cos you haven't got eyes in the back of your head" Pete (Manager high street pub)

Informants stressed the need for good communication between members of the staff team. Effective communication was the vital ingredient which transformed proactive monitoring into the maximization of opportunities for early intervention. However, it could be difficult for staff to communicate in large and noisy venues, particularly where sight lines were obscured. For this reason, a wide range of technologies were employed. In order to avoid disruption to the social atmosphere of the premises, it was imperative that staff communications be indecipherable to customers. In nightclubs, coded hand signals, lighting sequences and DJ announcements or sounds emitted over the sound system have traditionally been used to call for security and management assistance. In one nightclub, where I worked as a DJ from a raised booth overlooking the dance floor, I was issued with an air horn. I was instructed to blow the horn if I observed any "trouble" in order to attract the attention of the door team who would then follow my hand signals to guide them to the area in which the incident had occurred.

Many venues used some form of 'panic button' system operated from behind the bar and/or DJ booth to alert door staff stationed at the venue's entrance by means of an audible (bell, buzzer, ring tone) or visual (typically red light) signal. Some larger venues used a coded system of lights, for example, a 'traffic light system' where red, amber and green are used to denote different rooms or areas of the building. Members of staff might also use radio communication systems which are particularly useful when requesting urgent assistance. Handheld radio systems often remain susceptible to background noise interference and many operators therefore prefer to use earpiece or cuff microphones. The noisy environment may even influence the way in which incidents are resolved: "You may have to eject both parties as it's difficult to play judge within a loud club, so you get them to the front door, away from the loud music where you can actually hear what people have got to say" Steve (Nightclub Manager)

Venues may also nurture lines of communication (such as radio-links) with other nearby premises and negotiate reciprocal arrangements whereby each will supply reinforcement door staff in the case of a serious incident that threatens to get 'out of hand.' Such informal private policing solutions are often regarded by operators and police alike as the

preferred first line of defence in dealing with incidents that occur *within* licensed premises. Summoning of the police is usually reserved for extreme situations involving violence. Informants spoke of having access to a silent emergency panic button affording direct access to the police station. However, this button was used sparingly, as an action of last resort.[60]

Manipulation of Mood

Phat Controllers: DJs and the construction of hedonistic restraint

Although there may sometimes be guest appearances by musicians, television celebrities and pin-ups, in the vast majority of high street venues, DJs are the main generators and controllers of entertainment. DJs have a variety of roles within the NTE. In the 'mainstream' venues that comprise the bulk of the high street, DJs are expected to be highly adaptable. The mainstream DJ is required not only to play popular music, but also, where necessary, to act as compere. Social skills are an important attribute of the mainstream DJ, hence they are sometimes referred to as 'personality DJs.' The DJ provides a focal point for entertainment within the venue and acts as a mouthpiece for venue management, conveying messages to the crowd regarding drinks promotions, future events and last orders at the bar etc. DJs may also make announcements for customers including birthday messages and music dedications.

Unpopular, badly presented/performed and excessively loud music and other entertainment, together with poor quality sound, may irritate customers. Poor entertainment can induce boredom and resentment amongst customers and stimulate heavier drinking, to the detriment of the social atmosphere (Geller and Kalsher, 1990; Homel et al., 1992). Conversely, heightened states of arousal may also contribute to aggression. High street chains will therefore attempt to ensure that each of their 'units' strikes an appropriate balance between engaging entertainment and provocative over-stimulation. Although regarded as a musical expert, the primary function of the

[60] Part of the reason for the reluctance to involve police relates to the fear that evidence of crime and disorder may be used against the premises in some way.

mainstream DJ is to entertain the crowd and create an atmosphere of carefully orchestrated abandon.

DJs, lighting jockeys and other entertainers are very aware of the powerful influence of musical and visual imagery upon mood and behaviour, indeed the manipulation of mood may be understood as a core component of their craft. DJing is a highly reflexive form of social practice in that it involves constant monitoring of one's own performance in relation to the social atmosphere induced and the ways in which audiences receive particular recordings. Such reflexivity is particularly salient in the context of busy mainstream venues where DJ professionalism becomes intrinsic to social control:

"Music policy is a clever form of manipulation that most people do not recognize, even people in the industry. You will find a lot of inexperienced managers, DJs and security staff who don't pick up on these first signs of having discontent within a venue and they are important control measures. It is much more important to control the crowd with music than it is to control the crowd with security staff because if you have to constantly control the crowd with security staff you've lost the plot basically. You should be creating an environment which keeps people out of that mood where conflict can occur" Jim (Manager, high street bar).

During the course of my work as a DJ in mainstream venues, I was constantly aware of the possibility of being severely reprimanded, or even sacked, for playing the wrong music at the wrong time. In practice, this might involve being somewhat 'over-enthusiastic' in creating an atmosphere that was so frenzied as to render control difficult. Such states were deceptively easy to induce. Whilst novice DJs often interpreted euphoric responses as a confirmation of their skills, hard-nosed managers and door staff would regard such performances as indulgent and unprofessional. 'Problematic' DJing might also involve playing predominately to one's own tastes, or to the tastes of a minority, younger, or predominately male audience. Hence extended sessions of 'harder' musical styles are ill-advised and certain musical genres such as Ska may be avoided. The main problem with Ska, for example, is that, as one high street DJ put it, "it encourages big men, who wouldn't ordinarily dance, to start bangin' about and upsetting people" (Ken).

There may also be local and regional sensitivities in relation to different musical styles. Entertainers may, for example, need to be advised to avoid performing songs which have particular football affiliations. One DJ explained how his key consideration was to avoid music which appealed to the 'macho' values of customers:

"You have to be careful with *Oasis*, because what I can't have is two hundred lads just singing at the top of their voices...all of a sudden you feel you are at Maine Road watching a match and it's an intimidating atmosphere" Pete (high street bar) [61]

Hence, high street DJs are expected to 'play safe,' tailoring their sets to the perceived tastes of mainstream female, 'light-hearted' (ie. less-discerning), or 'camp' audiences, whilst disregarding the preferences of the venue's 'higher risk' constituencies.

Dealing with Requests

Like Becker's (1963) Jazz musicians, the contemporary DJ can find the problem of being externally directed in her work by members of the audience particularly problematic (see also Roebuck and Frese, 1976: 240). For the DJ, the fielding of musical requests by customers raises issues not only of professional pride and commercial imperative, but also of social control. As noted, the studious omission of situationally inappropriate music is the most essential component of the DJ's contribution to venue security. DJs must therefore determine the legitimacy of requests in relation to the predicted outcome of their fulfilment. Playing the 'wrong' record in order to appease one persistent, flirtatious or intimidating customer could be, quite literally in the eyes of an employer, more than your job's worth.

[61] Informants also mentioned other potential sources of entertainment which could give rise to customer over-stimulation. Topless female dancers and strippers for example were cited by a number of people as generating a 'wild' and unruly atmosphere amongst male customers. Moreover, it was felt that such performances could make the social atmosphere more uncomfortable for female customers thereby discouraging their (important) patronage: "The premises are party-orientated. It is geared towards the female, y'know, we try an' encourage female-friendly around our premises. Yes, men will follow, but you have to create a happy atmosphere for the average woman" Helen (DJ high street bar).

The professional DJ must learn the art of negotiation and emotional management. In directly refusing requests, the DJ may be interpreted as expressing disrespect for the customer's musical tastes, status or identity. If a customer loses face during such interaction, the DJ runs the risk of receiving an aggressive or even violent response:

"I was in a situation in Watford where it was the end of the night and I hadn't played this guy's record for him and he threw a bottle of *Pils* and it just missed my head and smashed on the back wall. I've had people in this bar swearing and cursing blind at me because I won't play their record, people tryin' to pull me out of the box" Darren (DJ high street bar)

Given the frantic pace of their work, DJs have little time to consider their personal safety; yet, they cannot rely solely on receiving physical protection from management and door staff. DJs have therefore developed a repertoire of concise interactional routines which they use to "soften the humiliation and dampen the prospect of aggressive compensatory behaviour that often follows on the heels of rejection or failure" (Snow et al., 1991: 425). This process of 'cooling out' (Goffman, 1952) or managing expectations is similar to that described by Snow et al (ibid) in their analysis of women's responses to unwanted sexual overtures.

Although the mainstream DJ will usually have, close at hand, all the software needed to fulfil the vast majority of customer requests, he or she may claim never to have heard of the track, or say something along the lines of: "sorry, I haven't got that /got that with me tonight/got that yet/got that anymore." This type of response forecloses the request, but may elicit ridicule – "I can't believe you haven't got that, call yourself a DJ!" - and also leaves the interaction open for the customer to make further (inappropriate) requests. An alternative response might be to promise to play the request later, in the hope that the customer will forget. This response does not work with determined and persistent people who return repeatedly to remind the DJ to fulfil their 'promise.' In such circumstances, DJs may have to fall back on a third form of response - the appeal to higher loyalties: "Sorry, I'm not allowed to play that because it's a Party night/70s and 80s night/ Alternative night/Dance night tonight" or "Sorry, the boss won't let me play that, it's

against the music policy." Such responses may be further softened by empathy: "Yeah, I'd love to play that/I really like that, *but*....", a sentiment that, in some cases, may be honestly expressed.

Many operators issue DJs and other entertainers with sample 'play lists,' providing guidance on appropriate and inappropriate musical styles. A number of high street chains have gone further, considering music policy to be an issue of such importance to the atmosphere and concept of their venues that their DJs are no longer afforded professional discretion; fixed 'play lists' are imposed by the company's head office and strictly policed by the managers of each unit. DJ performances are deliberately controlled and deskilled with the company removing, or at least restricting, any element of 'risk.' Within such venues, departure from music policy may warrant immediate dismissal for DJs.

The fixed play list should be understood as part of the more general process of homogenization described in Chapter 4, through which the night-time high street has been increasing filled with identikit theme bars. In licensed estates across the UK, crowds are now fed a repetitive diet of tired, safe and nostalgic party music night-in, night-out. DJs are not permitted to adapt their sets to reflect personal tastes or the preferences of locally idiosyncratic crowds. There is little space for individuality, creativity or the establishment of reciprocally appreciative relationships with the consumer.[62] With their bureaucratic top-down prerogatives and "visions for the brand," many chain operators seek to promote a predictable social atmosphere that is replicated throughout their estate (see Ritzer, 2004). The night-time high street, far from being a romantic arena of self-expression and self-discovery through music, is an arena which constrains the creative urges of producer and consumer alike. Risk-averse corporate culture holds both groups in an iron grip in its quest to govern every aspect of the music, mood and social control nexus.

[62] Indigenous 'house anthems' and regionally distinct 'sounds' can generate powerful structures of feeling and association, whilst contributing to the construction of local music scenes (see, for example, Haslam, 1999; Hobbs et al., 2003: Chaps 2 and 3). It was, of course, this very reciprocal relationship between the producers and consumers of nightlife which, for previous generations, played a significant role in the constitution of youth sub-cultures.

Different Nights, Different Controls

Notwithstanding the broader shift toward homogenization, in order to maximize the use of their facilities throughout the week, operators may offer niche nights which aim to attract distinct audiences such as students, clubbers and Alternative Music fans.[63] This approach to business promotion may generate divergent sets of security issues, with the different customer profiles and patterns of drug use on each night requiring an accordingly specialized response from the staff team. Symbiotic relationships between particular styles of popular music and the use of certain illicit drugs have long been observed (Collin, 1997; McKenna, 1996). Specialist dance music styles, for example, are often associated with the consumption of dance/stimulant drugs such as ecstasy and amphetamines, whereas mainstream pop and dance music (the staple diet of the high street) is typically aligned with the consumption of alcohol. These music-drug interrelationships have consequences for the manipulation of mood in contributing to the generation of particular types of conflict situation.

Researchers and other commentators have found that dedicated Dance venues (as opposed to drink-led venues which feature dancing) tend to attract generally non-aggressive customers and to experience low levels of disorder. When violence does break out at Dance venues this tends to be in relation to control of the door and other security problems related to the activities of drug dealers.[64] By contrast, it appears that the customers of alcohol-fuelled mainstream premises are likely to be generally more aggressive and prone to involvement in arguments, fights and criminal damage (Hammersley, et al., 2002; Hobbs et al., 2003; South, 1999). It should be noted however that fashions in music, drug use and entertainment constantly mutate and that the music-drug nexus may be further complicated by the increasing popularity of poly-drug use, involving the mixing of dance drugs and alcohol as "a matter of routine" (Parker et al.,

[63] Mid-week student nights in high street venues rarely adopt a 'students-only' entry policy and admission is often free. The marketing of such nights typically focuses on some form of drinks promotion. Some venues use outside promoters with specialist knowledge, skills or community links to attract customer interest, enthusiasm and loyalty for niche events.

[64] Gun culture can attach itself to certain types of music. There is a trend for shootings to occur around some urban music nights where firearms may be carried as a fashion accessory and antagonisms between rival gang members may be violently expressed.

2002: 947; see also Deehan and Saville, 2003; DPAS, 2002; Hammersley et al., 2002; Release, 1997).

Having discussed the importance of vigilance and the manipulation of mood, I now turn to the management of conflict through strategic social interaction.

The Management and Diffusion of Conflict

"You've got to expect a bit of trouble. If you come into this game and you don't think you'll ever be in a fight or something like that, well, you're stupid aren't yer?" Steve (Manager, high street bar)

Despite my previous work and research experience, I was surprised to discover that *all* of the managerial staff I interviewed (male and female, young and middle-aged, and from a wide range of city centre premises) had been involved in physically violent encounters with customers at some point in their careers. A number still bore the physical scars inflicted during such incidents. Of the violent incidents recounted to me (often in graphic detail), the majority involved attempts to control the behaviour of customers, against their wishes (see Fagan, 1993; Felson et al., 1986). This might apply to a very wide range of situations including the refusal of service at the bar, customers being asked to leave, the attempted confiscation of drugs or weapons and requests for proof of age.

A number of informants bemoaned the attitude of police, the courts and their employers, all of whom appeared to regard staff as 'fair game' for assailants, whilst imposing heavy sanctions upon those who acted in self-defence. As Darren, the Manager of a high street bar commented: "You'd be sent to hell if you did to them what they do to you." Moreover, although some employers did offer counselling to assault victims, others were not so sympathetic, expecting staff to "just get on with it as though nothing had happened." In general, there was an expectation that occasional acts of violence were to be tolerated as part of the job. Inability to cope with what was trivialized as simply the 'rough and tumble' of every-night life was regarded as a sign of weakness denoting one's basic unsuitability for the licensed trade.

Some of those interviewed pointed to a lack of experience amongst the management and staff of high street venues. In off-circuit regulars' venues, members of staff were drawn from a broad age range and many had worked within the premises for years. By contrast, informants from the high street venues often mentioned the tender age of their non-managerial staff (often students) who were typically employed on a casual and temporary basis. There was a high turnover of staff in high street premises reflecting the fact that although the experience of working in such places could be exciting and enjoyable, it was also poorly paid and involved long and unsociable hours. Moreover, workers were de-skilled and generally regarded by management as disposable (see Leidner, 1993).

Although bar and floor staff were selected, in part, by dint of their confidence, attractiveness and effervescence, there was an assumption that they lacked the necessary social skills to cope with aggressive customers. Formal qualifications and training were regarded as a poor substitute for social skills and working knowledge acquired through extended engagement with the public. Many had received basic classroom-based training, but this did not cover all eventualities or fully equip them for the task. They therefore remained vulnerable to predation. For this reason, informants spoke of "set procedures" being in place. Bar, floor and promotional staff were often encouraged *not* to deal with client's complaints or other forms of 'trouble,' but rather to refer such matters to their supervisor or a member of the management team, lest they react in a manner which might exacerbate the situation.

Personal Authority and Rule-Setting

"My Gaff, My Rules" (Al Murray, 'The Pub Landlord')

For licensees and managers, the ability to exert control over customer behaviour was regarded as an issue of minimal professional competence. In city centre venues, the 'good manager' was seen as someone with the necessary personal attributes and skills to manage conflict within an environment where there was a great intermingling of people with, often very different and conflicting expectations and lifestyles. The greatest risks of

violence were associated with premises in which staff had adopted an indulgent approach, allowing patrons to expect that aggressive behaviour would be tolerated (Graham et al., 2000; Graham and Wells, 2003; Levinson, 1983). It was felt that codes of decorum should always be dictated by management and never by the customers. This could only be achieved by establishing consistent standards and creating "a social atmosphere with clear limits" (Graham and Homel, 1997:177). Personal authority and confidence were regarded as essential to the managerial task. As Jim succinctly noted: "Running a pub, you've got to stand up to people" (Manager high street pub).

A number of informants felt that managers should run the doors during peak admission periods; although it was acknowledged that the use of door staff afforded managers more freedom to talk to customers and monitor activities throughout the venue. The ceding of security issues to door staff was associated with an inability to relate to one's customers. As Patrick, a nightclub manager, told me: "I see door staff as a last resort, a preventative measure, not as something I just use whenever I snap my fingers, cos that's wrong, it sends out the wrong impression." For some, over-reliance on the door team was seen as a mark of weakness and incompetence, as - particularly, if they were supplied by an external agency - it denoted that the manager had lost control of his or her business. Attempts to shield the youngest, least experienced and most vulnerable members of staff from exposure to danger were tempered by an expectation that everyone should contribute to the defence of a colleague.

Informants spoke of a "sixth sense," an intuition gained through experience in dealing with people, which allowed staff to spot problematic situations in their earliest stages and pre-empt their escalation. These personal skills were regarded as very difficult, if not impossible, to acquire by formally teaching methods, divorced from direct encounter within the enacted environment. Skills were 'learnt on the job' (Baird, 2000a) with the guidance of more experienced mentors. Accordingly, inexperienced managers were thought to threaten venue security. They were regarded as having a comparatively shallow understanding of how the business operated and its typical clientele; more specifically, they were not attuned to local sensibilities and rivalries, and the identities

and reputations of local troublemakers. Operating premises in the *absence* of an authority figure was regarded as a potentially risky practice that should be avoided at all cost.

Keeping Things Sweet

"Manners are the lubricant of social relations, the sweetener of personal intercourse, and the softener of conflict" (Grayling, 2004: 9)

Clearly, non-aggressive responses may help to reduce aggression among persons who have been drinking (Graham, 1985; Jeavons and Taylor, 1985; Taylor and Gammon, 1976). Yet, in comparison to the regulars' venue, it can be particularly difficult for high street operators to act in an *informal* capacity, and their much greater reliance on formal social control techniques (such as rows of menacing door staff) can militate against the creation of a relaxed and friendly atmosphere. As noted, this is a reflection, at least in part, of the diverse and fluid nature of their customer base and the sheer numbers of people who pass through their doors. However, even though opportunities for conviviality with patrons are limited, social skills remain to the fore. Employers select people of a certain 'type' whose personalities render them suited to the task: "no one should be in 'management' if they have a problem with people, especially silly, drunken or even violent people. Communication skills and confidence are what you're looking for..." (Baird, 2000b: 80).

When confrontations occur within licensed premises they are likely to be played out in front of an audience. This is important, as customers, particularly young men, often wish to avoid embarrassment or humiliation in front of their peers (Fagan, 1993; Gibbs, 1986; Graham and Wells, 2003; Tomsen, 1997). In this context, "one or usually both protagonists" may attempt to "establish or save face at the expense of the other" in a sequence of escalating "moves and counter-moves, each of which increases the probability of violence by reducing the options for a peaceful resolution of the conflict" (Leather and Lawrence, 1995: 395; see also, Berkowitz, 1978; Felson, et al., 1986; Toch, 1992). The importance of face-saving goes some way towards explaining why conflict and violence will often occur during the negotiation of control situations. In all such

contestations, peaceful resolutions are more likely to be achieved if the controller can draw upon personal resources in the form of experientially rehearsed techniques. For example, as Darren told me:

"Never bar anyone when they are drunk: *never*. That's the wrong thing to do, because they don't have anything to lose; they are already barred so they are more likely to react. When people have had a drink they don't want to reason with you, so you refuse them service and you say 'it's best to come back and we'll talk about it when you are sober.' If you're careful in what you say, they'll just go away with a bit of a whinge" (Assistant Manager, high street pub)

One favoured approach was to remove the 'audience effect' by physically separating the protagonists from each other and from interested bystanders. Staff also employed verbal techniques in an attempt to calm the customer down (see Hobbs et al, 2003: 138-142). Although communicating with customers through the fog of their intoxication was never easy, informants suggested that many situations could be defused by allowing customers to unburden themselves to a sympathetic listener. Such approaches to the diffusion of conflict are an extension of the skills learnt through dealing with the more routine scenario of customer service complaints.

Typical sources of customer complaint arise in relation to queries regarding change and the loss of cloakroom tickets. In both scenarios it can be difficult for staff to resolve such issues, whilst at the same time continuing to serve the needs of large numbers of patrons. Complainants may often be asked to wait for considerable periods of time, perhaps until the end of the night when most customers have left, or to return the following day. Such negotiations require particularly sensitive handling in order to prevent theft or loss, whilst at the same time seeking to ensure that customers are not conveyed the impression that they are being suspected of dishonesty or condemned as troublemakers. Again, the personal skills of staff, in particular their ability to combine diplomacy and good humour with a calm, confident and assertive manner were regarded as important contributions to the maintenance of order. However, in busy high street venues, the ratio of staff to customers and general social atmosphere militated against effective use of such skills and

differences between regulars' and circuit venues again became apparent in how such disputes were resolved:

"We are usually right, but you'd never say to a customer, 'no you are definitely wrong.' I take the till off, cash it up there and then, and if it's there, it's there and if it's not, well I can't take it any further. So I say, 'you've had a few beers haven't yer? and I'm sober. I'm not tryin' to rip you off, but I think you've made a mistake haven't yer?' and most of the time people will accept that because you did your best...Where you have regulars you get to know the people who are tryin it on" Mike (Manager regulars' venue)

Conversely, the manager of a high street bar described how he:

"... resolved it as per company policy. They said they had been short-changed and I said that I would endeavour to check the till at the most convenient and appropriate moment. But we were very busy at the time. You can't be just taking tills off during the course of the night because the place is very very busy and everyone else will get more irritated because you have one less till and they are waiting longer to get served. It wasn't safe to take it off to deal with this one person. I took the person's name, address and telephone number and said that I would, y'know, do my best to resolve it for them as soon as possible; but they weren't interested. They created a situation, got other people involved and that, y'know; it was very disruptive. I didn't have the time to be able to deal with that and deal with the situation with other customers. The thing was getting out of hand, so I got one of the other members of the team to get the doormen while I kept the individual concerned engaged" Paul

The most socially skilled of managers were proactive in their attempts to soothe interaction with potentially troublesome customers. (Cavan, 1966: 130-131) notes how bar tenders would present regulars celebrating a special occasion with a gift drink, a practice sometimes employed as a "means of controlling a variety of situations." John, the licensee of a city centre regulars' pub told me how he used this approach to establish bonds of familiarity and reciprocity with strangers. His pub was sometimes visited by 'stag parties,' these were typically large groups of young men from out-of-town who

were very drunk. John (who did not employ bouncers) described how, whenever such groups entered his premises, he would attempt to immediately create a relationship of indebtedness to himself as host, whilst at the same time, demonstrating personal authority, ownership and vigilance:

"The way I do it is; it's quite simple. I get into them at the early stages, just say: 'who's the unlucky boy then, getting married? What y'a drinking?' Get them a beer or whatever they want, something just to try an' get friendly with 'em and they're less likely to kick off because you're providing the groom with a free drink, see? Then, if you have to say 'calm it down a bit lads, you're upsetting other customers!' they take it on board."

Other tactics involved a reverse logic, wherein the escalation of aggression arising from a loss of face was actively facilitated, only to be used as justification for the customer's initial identification as a troublemaker:

"If they look like they're going to cause trouble, then the staff will say 'sorry you can't be served.' But we give them options; maybe they would like a soft drink (laughs) or come back tomorrow night. If they're reasonable, they'll just leave. But if they want to take it a little bit further you go down and say 'sorry sir, you can't get served' and by then they have dropped themselves in it by being too aggressive and we just say, 'well, that's the reason we're not going to serve you'" Tony (Assistant Manager, high street pub)

When Negotiation Fails

As Hobbs et al (2003: 147) note with regard to door staff: "Once the limits of negotiation have been reached," or violence has already commenced prior to staff intervention, "then physical force of some kind will be required." Once the decision has been made to physically remove customers from the premises it is important for the task to be conducted as swiftly and efficiently as possible, with the minimal involvement of bystanders or souring of the social atmosphere. Short of the immediate application of brute force, this can be achieved more easily by monitoring the person's behaviour in order to choose an optimal time for intervention:

"If someone's working their ticket, you wait till they are more than half way through their pint before you say ow't and then tell 'em to see off their drink, cos you know there's just a mouthful left. If you tell them when they've first got a full pint then they're going to drag it out and they'll just start arguing with you because they've only had a mouthful. Of course, you could take the pint off them and give 'em their money back, but it's easier just to wait till there's a little bit left" Dean (Manager high street pub)

Some sections of the leisure industry have long preferred managers with a "physical presence" for the running of potentially violent premises (MCM, 1990: 17). Accordingly, I found that a high proportion of the (male) managers interviewed for this study possessed an imposing physicality. Many considered themselves sufficiently intimidating to conduct ejections simply by the laying on of hands: "just put an arm around their shoulder, lead them to the door" (Tony, high street pub). Some made a point of wearing suits at work to enhance appearances of potency and authority.

When approaching an ejection situation, it was necessary to anticipate the course of impending violence and take steps to minimize its effects. If the person was seated, glassware would be swiftly removed from the area and tables and chairs moved aside. In order to make their removal easier, the 'offender' may be encouraged to stand. High-risk customers were approached with caution:

"You approach somebody to their stronger side 'cos if you approach them to their weaker side, then they have a tendency to hit you with their stronger side, but they feel uncomfortable when you stand against the stronger side. If they drink with the left hand, you go beside them by the left hand side before you throw them out. They can't swing for ya because they've got their hand down like that (demonstrates bent arm) and if they do try to swing a punch with the wrong hand it isn't going to do as much damage is it? Colin (Manager high street pub)

When negotiation ends, meaning and motive become of little import, as Colin notes: "it doesn't really matter who is wrong and who is right, you just get 'em out." Yet, even

customers who have had to be physically removed will usually be given further options. Blanket exclusions can create enemies and simmering resentments, not only amongst the ranks of the excluded, but also amongst their friends and associates. Licensees and managers would usually attempt to remain fair and reasonable, perhaps telling the ejected to come back another night once they have sobered up, when an apology and a promise of future good conduct may be sufficient to assure re-admission.

Closing Time

The last hour of trading has long been a particularly sensitive time in which a disproportionate amount of violence in licensed premises occurs. Although the Government anticipates that the extensions of hours permitted by the Act will encourage more graduated customer dispersals, it seems likely that some disparity between the expectations of operators and consumers in relation to closing time will remain and that end of the evening sessions will still require careful management and pre-planning.

Preparation for closing time may involve allowing the atmosphere in the premises to gradually 'wind down' by decreasing the tempo and volume of the music and the intensity of lighting effects. Further admissions to the premises may be prohibited. Ringing bells, flashing room lights and DJ announcements may be used to call 'last orders' and customers may be requested to terminate any pool playing or other games. Bars are fully staffed in order to cope with any influx of customers wishing to buy drinks. At the terminal hour, bars are closed, bar lights switched off and towels may be draped over pumps and fonts. Music is turned off[65] and the lighting in customer areas intensified. Bar staff will begin to clean up and collect glasses. Whilst clearing up, staff will remind customers that the premises are about to close, a message emphasized by obvious hints, such as chairs being put on tables and the removal of ash trays. Again, the social skills of staff come to the fore:

[65] There is a case to be made for not turning the music off immediately but continuing to wind the night down by playing mellow low-tempo music which may have a calming effect and further stagger departure.

"It's just a case of shouting 'time,' give 'em maybe fifteen to twenty minutes, then you start sayin' 'drink up please, start makin' your way out.' There's people sometimes nurse a little bit of drink in the bottom and you have to coax them, make a bit of a joke of it, 'you got no home to go to?' sort of thing" Ken (Bar tender, high street pub)

Any stragglers are encouraged to leave in a more insistent manner. Arguments can be de-personalized by reminding customers that the premises are legal obliged to close at the time specified by their licence. Signs may be displayed, asking people to leave quietly, a message that may be underlined by door staff.

'Pricing oneself out of trouble'

Commercial gentrification, and its assumed efficacy as a control mechanism, has a long history within the licensed trade. Mass Observation describe in fascinating detail how the pubs of 1930s Bolton were spatially divided between what was, quite literally, a 'spit and sawdust' environment within the workingmen's 'vault' and the somewhat more refined atmosphere of the 'lounge' or parlour (see also, Everitt and Bowler, 1996). The lounge had better furnishings and décor, more comfortable seating and fewer (!) spittoons, the aim being to be more female-friendly and to accommodate those in their 'Sunday best.' In an attempt to deter "undesirables," publicans charged an extra penny on the price of beer to those drinking in the lounge (Mass Observation, 1943; 99-100). The idea, in part, was to physically segregate the 'rough' from the 'respectable' clientele and mixed-sex groups from single sex (male) drinkers.[66] This attempt to create a two-tier social institution was, however, largely unsuccessful, as patrons would judge a pub in accordance with its general reputation: "you never got both rooms filled- *you either had a vault crowd or a parlour crowd*" (ibid: 103). These assumptions regarding the connections between drinks' pricing policy, standards of décor and the behaviour of patrons remain strong. As Bob Senior, Managing Director of the quoted high street operator *Ultimate Leisure* states:

[66] Mass Observation (op cit: 143-5) describe how female drinking in the vault was subject to strict social censure.

"We don't discount on Friday and Saturday nights because we are already full and the right investment gives us the right clientele. It's recognising that value for money isn't always a pound a pint. It's £2.90 a pint, but having the right clientele in the premises and the wrong kind excluded. Where required and where appropriate we take on other discounters but, as a rule, we go for the value-added end of the market (Night, 2001a: 18).

As noted in Chapter 4, when supply outstrips demand standards may be compromised. One high street licensee explained how pricing policy required the drawing of a fine line between optimum competitiveness and the risks associated with going too far 'down-market':

"Y'know, if you do your doubles for £2, trebles for £3, your house brand like *Fosters* lager down to £2 a pint, stick a draught beer on for one-and-a-half quid, just keep changin 'em as well, 'cos people get bored with it. Keep shoppin' around, get cheap alcopops and stick them on at a competitive price, but don't give it away, don't do that cos you'll be full of nuggets and you'll get tarred with that brush of being a rough place" Paul

Clearly, the practice of serving alcohol at discounted prices can encourage excessive consumption if not employed with caution (BBPA, 2002; Nicholson Committee, 2003; St. John Brooks, 1998). Higher alcohol sales are associated with an increased risk that an establishment's customers will commit an alcohol-related offence (Graves et al., 1981; Markowitz, 2000; Stockwell, 2001) and experience a range of health and accident-related problems (Caswell et al., 1993; Stockwell et al., 1993). In judging the security implications of drinks promotions, some operators take the long-term view. As Jim, a Nightclub Manager, explained:

"Tequila wanted us to put on a promotions night selling double Tequila for a pound. They would do all the promoting, all the radio advertising, have girls walking 'round with shots, that sort of stuff, but we said no. That's a strong bloody drink! - they come in and have two or three double Tequilas and they are on their back. Then you need the ambulance, and the police get involved."

When designing their units, many of the high street chains have attempted to move away from any aesthetic connotations of male (implicitly blue collar) drinking culture, both in terms of 'female-friendly design features' and operationally, in terms of pricing policy and food offers (see Chatterton and Hollands, 2003). Food is known to slow the absorption of alcohol into the body thereby reducing blood alcohol levels (Wedel et al., 1991) and the availability of food (especially substantial meals) has been associated with a reduced risk of aggression (Graham et al., 1980; Homel and Clark, 1994).

Summary: Putting it all together

"It comes down to putting together a team of individual experts... Each person understands why they have to do their job in a certain way, the bar staff doing their job, the DJ doing his (sic) job, and the cleaners and maintenance people doing their job during the day. We are very proactive, the environment is very tightly controlled and everyone is focused on trying to keep the customer happy; keep the customer calm" Alan (Manager, high street bar)

This chapter has highlighted what I understand to be key conceptual deficiency of previous studies; namely, the tendency to focus upon individual elements of social control such as venue design, managerial style and the role of door staff. There has been a general failure to acknowledge the fundamentally purposive, complex and interconnecting orchestration of such factors. The successful exercise of social control within licensed premises is a team effort and operators will often take great care in designing and operating their premises in such a way as to create the illusion of a safe and controlled environment; an environment one step removed from everyday life, in which customers can relax and enjoy themselves amongst like-minded people.

In some instances, the efforts of staff are supported by the premise's regular clientele. Informal social control over behaviour is relatively strong within these regulars' venues, in comparison with those premises which draw their custom from the largely anonymous crowds that populate the high street leisure circuit. Regulars' venues require less overt

and formal control by staff. Even in busy city centre locations, they may operate successfully without the need for bouncers.

In high street venues, the maximal balancing of intoxication and control is regarded as a corporate goal which enhances profitability. The methods used to manipulate customer mood and behaviour are holistically constituted, comprising an artful mix of various elements. Like a great culinary creation, each ingredient must be applied with fortitude if the desired 'taste' is to be achieved. Getting one element wrong can have deleterious consequences. Inappropriate music selection or drinks promotions, for example, may sour the mix. Social controls are applied strategically as cooperatively-constituted interactional accomplishments. A central aim of this chapter has been to show how security roles within such premises may become, through personal experience and the acculturation of occupational mores: (i) intrinsic to the work of all members of staff who deal directly with the public; (ii) constituted as a 'team effort' involving staff performing a variety of, ostensibly unrelated, work tasks; and (iii) quite *atypically* require reactive intervention by dedicated security staff and the public police.

Rejoinder

The impressions of order and control recounted above represent what are, essentially, pragmatic theories of 'best practice.' Most high street venues are well-run; however, the possibilities of control are inevitably restricted by the nature of the social environment. All too often, one finds venues attempting to get through the night in a chaotic fashion which involves the taking of risks, whilst minimizing costs and maximizing profits. The following case study offers detailed description of a night (and lunchtime) spent in and around *Harvey's*, a theme bar in a medium-sized (80, 000 pop) town in the English Midlands. The events described were observed during the course of one unremarkable weekend (Saturday night and Sunday afternoon). The name of the bar, which is operated by a listed high street chain, has been changed in order to preserve the anonymity of the operator. The case study introduces the notion of a relationship between licensed premises and their surroundings. The import of this relationship will become apparent in

the following chapter in which I explore the theme of social control in night-time public space.

One Night in Heaven: The High Street Experience

Harvey's occupies two floors of a glass-fronted building on the High Street. Many of the other national chains are located in close proximity, including *Edwards* (directly next door), *Yates's*; *Po Na Na*; *O'Neill's; Bar Med*; *Wetherspoons*; *Chicago Rock Café*; *Varsity* and *Toad.* Most of these premises feature 'music and dancing' and are licensed beyond the traditional 11pm watershed. In addition to the brands, the area also has a number of other un-branded nightspots. Although marketed as a 'café bar,' *Harvey's* effectively operates as a pub during the day and a nightclub in the evening; the unit trades until 2am, with no admission fee, or apparent dress code.

On the ground floor of *Harvey's*, next to the entrance, there is a small designated "eating area" consisting of three benches and seating for ten people. There is no cutlery or table dressing and a sign asks customers to refrain from smoking in the area until 9 pm. Additional comfortable seating and low tables are provided close to the dining area. Most of the furniture in the venue is more primitive, consisting of wooden tables and benches, a line of which stretch along the wall opposite to the long ground floor bar. Each bar has twenty five pumps. During my evening visit, the floor space in front of this bar is clear of furniture, although, on my return the following lunchtime, extra tables and stools have been placed in the centre of the floor. At the far end of the ground floor there is a small dance floor, stage, and DJ console. A second bar is located on the first floor along with more bench tables and a larger dance floor. The DJ works from behind a console on this floor and both dance floor areas are illuminated by disco lights. The walls are painted in neutral, earthy colours and there are various artefacts and painted motifs pertaining to the theme of the bar around the walls. The slogans "The liver is evil," "The liver must die," and "punish the liver" are displayed on the ground floor ceiling beams of the venue and are particularly noticeable as one enters the venue. There are a number of large plasma screens around the venue which show footage of football and rugby matches. The kitchens are not visible. Food is advertised as available until one hour before closing.

Menus are obtained from the bar during the evening and from the tables at lunchtime. Customers order food at the bar.

Upon my arrival at 7.30 pm, the venue is quiet and relaxed with twenty two customers present, all but one of whom are men. Their ages appear to range between twenty five and forty years of age. The main activity is drinking and watching sport on the plasma screens. The first floor area is roped off at this time, as is again the case when I return at lunchtime the following day. At 7.40pm I order the most expensive meal, priced at £6.70p. Although the venue is not yet busy and my companion and I are the only diners, service is remarkably slow. Our food arrives thirty five minutes after our order, during which time the bar maid comes to check whether we have ordered jacket potatoes or chips with our meal, as she says she cannot remember. When the food arrives it is particularly unappealing. I see no one else eating at *Harvey's* that evening or the following lunchtime, nor do I see any sign of meals being consumed before my arrival. At 7.55pm the volume of the music increases considerably and the lighting is turned down low. Additional bar staff and the door staff start work at 8 pm and at about 8.15 pm the night-time customers begin to arrive. At 8.30pm, I leave the venue for a few minutes. As I walk a little way up the high street, I notice a *Pizza Express* restaurant which is full of diners.

From 9pm onwards, the premises begin to fill. The gender distribution changes as more women arrive and throughout the busiest periods about 30% of customers are female. Many customers arrive in large single-sex groups, some of whom are as many as twenty-strong. Some of these groups appear to be stag and hen parties. In one such party, the 'bride' arrives in a nurse's uniform festooned with inflated condoms. Customers and staff have a relaxed attitude towards dress and many wear jeans, trainers, shorts and sports tops. The most popular attire for men is brightly-coloured shirts with logos such as *Polo* and *Ben Sherman* worn to hang loosely over the tops of jeans or trousers and black shoes. Women appear in general to have made more of an effort to 'dress up' for the evening than have the men. In practice, this means having more flesh on display than clothing. Some men, particularly those with more developed physiques, adopt a similar approach to gendered display, sporting tans, tight-fitting sleeveless t-shirts and a swaggering gait.

Both sexes wear clothes in such a way as to reveal bodily adornments such as tattoos and pierced navels. The sexually charged aesthetic is accentuated by images on the plasma screens which show music videos and customers with bouncing breasts and gyrating torsos enjoying the '*Harvey's* experience' whilst downing shots of spirit and bottles of alcopop. This footage is interspersed with details of drinks promotions, flashes of the brand logo and activities within the venue itself. The most popular drinks appear to be pints of strong draught lager, bottled lagers and alcopops. Customers are now predominately aged between eighteen and thirty, with a small minority appearing older or younger than this. The disc jockey dedicates a record to a girl celebrating her eighteenth birthday.

At 9.50 pm, I notice that a rope barrier has been placed in the street to control entry to the premises, although no one is queuing to gain entry at this time. I observe four door staff, all of whom are all male and dressed in a uniform of black trousers and white shirts. The two men positioned at the door provide an imposing physical presence. The other, physically smaller, security staff are positioned around the venue, one on the stairs overlooking the ground floor area, and one at the top of the stairs, watching over the first floor. The manger, a man of slight build, who appears to be in his early-twenties, also performs a security role. He alternates his time between the door, where he scrutinizes customers as they arrive, and patrols of the venue. At 10.15 pm I notice that a group of clearly underage girls are refused entry.

The atmosphere is now hectic with large amounts of alcohol being consumed. Notices behind the bar advertise 'shooters' (mixtures of spirits and fruit juice) called 'Illusion' and 'Sex on the Beach' for £1-a-shot and bottles of lager are advertised at 'two for the price of one.' The music can best be described as mainstream pop and party music from the 1960s through to the present day. I notice that there are no flyers or posters advertising forthcoming entertainment, all promotional material relating entirely to drinks offers and special nights promoting a particular brand of drink. The only sources of entertainment are the DJ-generated music and lighting and the images on the plasma screens. Noting that food is advertised as available until 1am, at 10.20 pm I attempt to order some chips. As the venue is very crowded, there is nowhere available to sit. The

barman tells me that we can have the food if we able to inform him where we will be sitting. All the tables on both floors are, by this time, occupied by groups of drinkers and eating at the extremely crowded bar is not a viable option. Faced with the prospect of eating chips whilst standing up in a hot and crowded environment, I decide not to place the order.

People are now dancing on both dance floors, although dancing is primarily a female activity. Women dance with luridly coloured bottles in their hands from which they take the occasional swig. It is noticeable that the female customers who are dancing are to some extent, 'on display,' both to the men who have positioned themselves around the dance floor areas in order to watch them, and to other areas of the venue via the plasma screens. At 10.25pm, two girls get up on the tables to dance. This is encouraged by the disc jockey, who invites everyone to "dance up on the tables, wherever you want, we don't care!"

At 10.40pm I decide to leave *Harvey's* for a period in order to observe activities in the surrounding area. At this time, customers are entering and leaving the venue in all directions. The constant flow of people around the town centre and the number of people I see in more than one venue is suggestive of a drinking circuit. Movement of customers between *Harvey's* and some of the other branded establishments is particularly evident. When I return to *Harvey's* at 11.30pm I have to queue for ten minutes in order to obtain re-admission. As I queue, I see one male customer roughly ejected by door staff, he continues to curse and remonstrate with police officers who are positioned outside the venue. After a brief struggle with the police, the man is arrested and taken away in a police van.

By midnight, customers are dancing on all available table space on both the ground and first floors. Many of the customers dancing on the tables and chairs continue to hold glasses and bottles in their hands. Glasses are dropped, tipping their contents onto the table, before rolling off and smashing on the floor. Drinks spill onto people who are sitting and standing below, to the obvious annoyance of some. However, most customers seem oblivious to danger, defilement and dry cleaning bills. Two of the girls who are

standing on the tables clutch each other and engage in a session of French kissing and heavy petting.

At 12.15am the venue appears full to capacity. Despite having five serving staff, the first floor bar is short-staffed. This bar area is now very crowded and it takes each customer around ten minutes to get served. Although staff make periodic journeys through the crowd in order to collect 'empties' and clear broken glass from the floor, every available surface is now covered in empty or partially consumed drinks. Two large open plastic 'wheelie bins' containing empty bottles are located on the ground floor in prominent public areas near to the staircase and the dance floor. Floor staff drop empty bottles into these bins and both are almost full by the end of the evening. The male toilets are newly decorated and well-maintained, but in the course of the evening become flooded and strewn with refuse.

Despite the chaotic and sometimes fraught atmosphere, I encounter no violence or serious conflict within the premises. At 12.27 am I notice two male police officers watching the venue from inside their vehicle. They are parked in a side street which has a clear view into the premises. From 1.30 am, a police van is positioned directly outside *Harvey's*, this vehicle having earlier been parked outside other venues. I note that a public CCTV camera positioned a short distance further up the High Street is directed toward the *Harvey's* entrance. When its bars close at 2am, *Harvey's* retains around 90% of the peak occupancy levels observed around midnight. Customers leave en masse at around 2.15 am, when they are herded out by door staff. I stand on the street and watch as the venue is cleared and its doors locked. It takes some time for the crowd to disperse and gaggles of customers remain outside *Harvey's* for another forty five minutes.

During the 2am-3am period, the pedestrianized High Street remains crowded with groups of excitable people talking loudly and shouting. The street is littered with food and takeaway boxes and I notice pools of vomit and a strong smell of urine around some of the shop doorways. Gradually, the crowds move on to a nearby street where there is a taxi office, a taxi rank and a late-night takeaway. There is no indication that buses or trains are available. By 2.30am, large numbers of people have congregated in this adjacent

street. They spill from the narrow pavements into the path of passing vehicles as long queues for taxis develop, which remain until around 3.30 am.

I join a queue to buy food at the *Charcoal Grill Kebab* and recognize many people I have seen earlier in *Harvey's*. At 2.40 am I witness fighting amongst a group of young men (aged approximately 16-19 years) outside the takeaway. The 'action' occurs within a few feet of me as I eat my "full Doner with everything on." I see one youth punch another directly in the face, prompting others to join in. The victim, who now has blood streaming from his nose and onto his white shirt, appeals to onlookers: "I don't want any trouble...I'm just trying to eat my cheesy chips!" Within seconds, about ten people are involved and the combatants begin chasing each other down the street. One young man is pulled to the ground and kicked. On the pavement outside the takeaway it is now difficult to discern the difference between spillages of blood and tomato ketchup. The youths involved are recognizable as people I have seen drinking in *Harvey's*, and also in other venues, earlier in the night. The incident, which lasts for about fifteen minutes, creates a feeling of tension in the area and a number of onlookers became visibly distressed and agitated. Some people try to intervene to stop the fighting and one bystander calls the police on her mobile phone. A young girl with long dark hair and a red dress flails her arms and grabs at the shirt of one of the men, "Leave 'im. Leave 'im alone you fat fucker!" At 3.10am, two police officers arrive by car and another two on foot. The incident has passed.

Chapter 6

Contesting Public Space

"At night, the city's spaces are transformed in ways which make them anew"
(Amin and Thrift, 2002: 120)

The Privatization of Night-time Public Space

Like other urban environments, the night-time high street is characterized by a proliferation of ostensibly 'public' spaces that are "being redefined as communal spaces with similar features to those that exist on private property" (Shearing and Wood, 2003: 411). The negative consequences of the rise of privatized public space have been emphasized in relation to issues such as target audiences, ownership, security, controlled behaviour, social exclusion and design (Christopherson, 1994; Davis, 1990; Hannigan, 1998; Reeve, 1995; 1998; von Hirsch and Shearing, 2000).[67] Although drawn from a wide range of disciplines, these critiques of privatized public space share a common concern to highlight the social and normative implications of assigning large tracts of urban space to the consumer, rather than to the citizen per se.

These issues appear especially controversial and ambiguous in relation to those formerly wholly public areas which have subsequently been transformed into "communal spaces...that cut across the public-private distinction" (Shearing and Wood, Op cit.: 419).[68] Perhaps the most important implications of these transformations in ownership

[67] Criminological analyses have generally focused more narrowly upon exclusionary social control within 'mass private property' such as shopping malls and recreational theme parks (Shearing and Stenning, 1987; Wakefield, 2000).

[68] One of the best British examples of this can be found in Liverpool city centre. With the assistance of Liverpool City Council, development company Grosvenor Estates has secured a 250 year lease for an area covering 35 streets between the Paradise shopping district and the Pierhead on the Mersey. Grosvenor has allocated £100m to compulsory purchase all of the buildings in the zone in order to build 350 flats and houses and a new shopping centre. Controversially, public rights of way and rights to assembly in the area are to be transformed by private ownership with such activities requiring the express permission of Grosvenor. Private security forces or 'quartermasters' will patrol the streets and have the power to remove

and control relate to the social mix of citizens encouraged to populate these hybrid urban spaces. People's experience of public space is diverse and has meaning only in the context of personal identity as shaped by dimensions of gender, age, race, sexuality and class (Day, 1999; Green et al., 2000; Moran et al., 2003; Mort, 2000; Pain, 2001; Valverde and Cirak, 2003; Walkowitz, 1992; Watt and Stenson, 1998). Approached in this way, the critique of (day-time) privatized communal space may be mirrored in relation to the night-time high street only in so far as it can incorporate one fundamental twist:

Consuming in Safety/Consuming in Danger

Research suggests (Oc and Trench, 1993; Beck and Willis, 1995) that in high streets, shopping malls and similar sites of day-time consumption, "perceived risk is strongly associated with what has been termed 'avoidance behaviour'" (Beck and Willis, ibid: 220). Consumers who feel unsafe will often elect to take their custom elsewhere. As the success of privately owned out-of-town shopping and leisure facilities implies, many day-time consumers are attracted by regimes of safety, accessibility and predictability enforced by a discreet security presence (Reeve, 1995). Beck and Willis go so far as to argue that in shopping environments, consumer perceptions of security can be regarded as a "precondition for commercial success" (1995: 227). Such understandings have been influential and go some way to explain the rise of Town Centre Management (TCM) and Business Improvement District (BIDs) schemes (see Hobbs et al., 2003: 256-7; Holden and Stafford, 1997; Jones et al., 2003) through which the perceived security benefits of 'mass private property' are now being applied to the British high street. As discussed below, similar security concerns and avoidance behaviours have been noted in relation to the NTE. Yet, amongst *core consumers* of nightlife, attitudes can be divergent (Hobbs et al., 2000).

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people from the area whom they deem undesirable. There are also plans to provide additional public police patrols at the developer's expense.

'Painting the Town Red' (Embracing the Night)

As described in Chapter 5, urban nightlife areas are characterized by alcohol and drug-fuelled intoxication, activities which many participants associate with taking 'time out' from their daily lives. The night-time high street thereby becomes a particular kind of 'behaviour setting' (Barker, 1968), that is, a time-space environment (Giddens, 1984) in which a standing pattern of behaviour occurs which is largely unique to that setting. For some, especially the young, night represents a temporal 'frontier' (Melbin, 1978) beyond which the security conscious values and technologies of the day appear to give way to an almost converse set of concerns.[69] This apparent modification in "practical consciousness" (Giddens, 1979; ibid) has far-reaching implications for social interaction.

As Wikström notes, "the downtown area...particularly at night, is the most socially unstable public environment in the city" (1995: 437-8). Busy nightlife areas are often crowded, chaotic, noisy, dangerous and exciting places populated by 'beautiful people' and characterized by a comparatively 'lawless' atmosphere of low level disorder, illegal parking, the sounding of horns and sirens, arguments and speeding emergency vehicles. It is this very edginess and instability that contributes to the function of the night-time city as an attractive environment for the young, adventurous and action-seeking nightlife consumer, the type of person who does not necessarily wish to consume in 'safety' (Ditton, 2000). In the evenings and at night, particularly at weekends after 10 pm, there is a tendency for people predominately aged from seventeen to twenty five years to visit urban centres. Towns and cities now compete to offer a weekly 'carnival' atmosphere to young people. Consumer expeditions are rarely conducted alone. The night-time high street is not an environment hospitable to the 'window shopper' or detached flâneur - it is a place of active engagement in collective rituals of mass consumption.

[69] Although, as discussed in Chapter 2, the cultural themes of danger, excitement and excess are both archaic and central to the attraction of the urban night, more research is needed which directly explores the values, motivations and perceptions of contemporary nightlife consumers. Studies that have been conducted have tended to reflect a governmental focus on the drinking and drug-taking practices of young people (Deehan and Saville, 2003; Engineer et al., 2003; Harnett et al. 2000), rather than more general participant attitudes to nightlife (although, Chatterton and Hollands, 2003 and Malbon, 1999 provide notable exceptions).

As we saw in Chapter 5, consumer adoption of the "night-time attitude" (Gusfield, 1987: 78) is intimately understood by leisure operators. Within licensed premises, operators skilfully exploit, commodify and manipulate consumer expectations whilst simultaneously imposing their own 'house rules.' Accordingly, the marketing methods used to attract patrons sometimes belie full commitment to the order maintenance concerns of those policing and regulatory bodies who seek to impose the restraints of the day-time economy upon the business of the night (Swinden, 2000). Mutual understanding between producer and consumer ensures that within the night-time high street, profitability can not only be maintained, but even enhanced, under conditions of danger. These reflections allow us to posit that many of the key criminogenic departures between day-time and night-time urban consumption may be traced to a consideration of who does, and who does not, populate night-time public space. As Worpole, an influential proponent of the 24-hour city concept during the 1990s concedes:

"...at present the bid to extend the economy of the city centre into the small hours is principally coming from the licensing and restaurant trade. We have yet to see the 24 hour library or the 24 hour study centre, let alone the 24 hour railway or bus station. So the project ends up as being targeted at those with money, principally the young and other groups with large amounts of disposable income...what is being created is a central core of high consumption" (Worpole, 2003: 1). [70]

Although licensing de-regulation has helped to animate once deserted streets, whilst there may sometimes be safety in numbers, the composition of a crowd is equally important (Oc and Tiesdell, 1997). Accordingly, Worpole acknowledges one further and fundamental point: the 'increased safety through animation' argument, as described in Chapter 4, will "only work if you regard city centre space as public space and democratic space, open to everybody" (ibid).

Further insight into these demographic issues can be obtained by considering the social profile of offenders and victims.

[70] Similar observations are developed at length in Chatterton and Hollands (2003); Hadfield et al., (2001) and Hobbs et al., (2003).

Offenders

It is sometimes assumed that offences committed in a nightlife context relate almost entirely to the activities of the stereotypical heavy drinking and casually dressed young male. Although alcohol 'misusing' "weekend warriors" (Marshall, 1979) who actively seek out violence as a recreational activity (Burns, 1980; Dyck, 1980; Tomsen, 1997; Graham and Wells, 2003) [71] may well inflict a disproportionate amount of harm, they tend to be relatively few in number. In their summary of empirical evidence from Cardiff - drawn from an unusually comprehensive data-base on alcohol-related crime and disorder - Maguire and Nettleton (2003) found that most of the 'trouble' occurring in and around nightlife areas appeared to be spontaneous and unplanned. Although, as anticipated, most arrestees were young and male, the majority had no previous convictions for violent behaviour.[72]

Victims

The most important predictor of victimization is exposure to risk. Exposure is associated with socio-demographic, lifestyle and area factors and is therefore distributed very unevenly between different social groups (Budd, 2003; Kershaw et al., 2000; Mattinson, 2001). A number of studies have shown that, in comparison with other members of the population, those who go out at night, especially for entertainment, are more likely to become the victims of violent crime (Budd, 2003; Felson, 1997; Gottfredson, 1984; Lasley, 1989; Miethe, Stafford and Long, 1987). Intoxicated revellers, especially if they find themselves unable to find transport home late at night, are placed at greater risk of accidental injury, robbery, sexual assault and various forms of street crime (Giesbrecht et al., 1989; Magennis et al., 1998; Shepherd and Brickley, 1996; Wechsler et al., 1994). The crowded and chaotic nature of nightlife areas is attractive to a variety of offenders

[71] Graham and Wells for example, found that "male-to-male aggression in drinking settings reflects a form of social conformity or a rite of passage for at least some subgroups of middle class males." For their sample, fights were "considered normative and not necessarily undesirable" (2003: 561-2).

[72] Although some offenders had been arrested for violent or public order offences four or more times in the past, these recidivists constituted only fifteen per cent of the total number of arrestees (Maguire and Nettleton, op cit: 36).

and those seeking to exploit informal economic opportunities, such as street robbers, bogus taxi drivers, unlicensed vendors, rickshaw touts, pickpockets, drug dealers, prostitutes and pimps. In a nightlife environment these activities may be pursued in conditions of relative anonymity.

"Taxi mate?"

Closure of the Underground after 12.30am and a shortage of licensed black cabs can create transport difficulties for those enjoying the Capital's nightlife. Many revellers end their night with a search for transport and, quite possibly, a journey home in the private car of a total stranger. The following case study describes the events witnessed by a colleague and I in the course of two nights spent observing activities outside an 'exclusive' West End nightclub:

On the weekend nights of our visit, street activity in the vicinity of the entrance to the Geisha was constant from 10.30pm onwards. There were people standing on the pavement opposite the club entrance throughout the evening. It was unclear whether these people were meeting friends, celebrity spotting, or negotiating their way onto the guest list. Although most customers arrived on foot, an unusually high proportion arrived in taxis or private cars. Peak activity around the door occurred between the times of 11.30pm and 3.45am. It was not until approximately 11.30pm that queues began to form around the club's entrance and the period of peak inflow of customers occurred during the 12midnight-1.30am period. After midnight, the street became constantly busy with mini cabs arriving, waiting and leaving. There was a constant presence of parked and waiting vehicles making what was already a narrow street, difficult to negotiate. Vehicles were often double-parked, and cars would periodically pull up outside the club so that the driver could talk to the door staff. At one point a police car was caught in the ensuing gridlock. A few customers began to leave the premises from 2am onwards. After 3.15am, activity around Geisha intensified as people began to leave the club.

We observed the arrival of more people in the area attracted by rich pickings around the door. Homeless people were asking for donations and photographers had appeared. The

atmosphere was noisy and intense as these additional people mixed with crowds of high-spirited and inebriated customers, minicab drivers, door staff, and onlookers. Unusually for a West End nightclub, we saw only a small proportion of customers leave the venue on foot. What appeared to be an organized un-licensed mini cab service was observed. The service was directed by one individual with a mobile phone, clipboard and pen. This person liaised with door staff and customers leaving the club. Customers were assigned to waiting or newly arriving vehicles, or told to wait on the pavement until a vehicle became available. At 3.45am on Sunday morning we asked this person for a 'taxi' to take us to East London. We were told to wait on the pavement for five minutes whilst he found a driver for us. Although we had not been in the club that evening, we emerged from amongst a crowd of patrons gathered on the pavement and there would have been nothing to distinguish us from Geisha customers. Indeed, the man informed us that his service covered not just Geisha, but also all the other clubs in the area.

When the driver arrived we were offered a price of £22 for the journey, which we 'haggled' down to £20. We were then led to an adjacent street. As we walked, the driver informed us that different car models would incur different prices for the journey. He pointed out a Peugeot 205 apparently at £12, a Mercedes at £50, and his own aged BMW priced at £22. He then opened the rear passenger door of the BMW, told us to get in and opened the boot of the car. We noticed that the car did not have licence plates, a meter, or any form of radio communication system. The driver did not have an ID badge. He told us to sit in the car whilst he went for a "piss." While we sat in the car and watched, he then urinated in the road in front of us and in full view of passers by. He then lifted the bonnet and appeared to pour water into the radiator which was giving off stream. He then put a water container back in the boot and got into the car. During the journey he told us that he worked for Geisha. At our destination we gave the driver £20. He asked for a further £2, but was unable to give us change for £5 and informed us that he had run out of receipts.

Maguire and Nettleton (op cit) found that the majority of those arrested for alcohol-related violence were young white males (around half aged between 20 and 30) who were first time offenders and who lived locally and that "assault victims whose details were

recorded had fairly similar profiles to offenders in terms of age, sex and residence" (2003: 36).[73] Clearly, nightlife brings offenders into contact with victims in numerous ways, with victim movement patterns often proving "as important in determining where and when a crime occurs as offender movement patterns" (Brantingham and Brantingham, 1995: 11).

In the following paragraphs, I argue that this population profile, in terms of age, behavioural norms, drinking practices and attitudes to security and danger, has contributed to the construction of time-space locales notable for their high degree of objective crime risk.

From High Street to 'Street for Getting High': The Purification of Night-time Public Space

Those familiar with sociological analyses of the urban condition will note the gulf between the type of communal public/private spaces of consumption described above and the characteristics of public space, as commonly understood. Urban public space, and city centre streets in particular, are almost universally celebrated by liberal scholars as a distinctive realm, "the natural home of difference" (Sennett, 1990: 78). Such areas are regarded as accessible spaces of free and spontaneous assembly in which "different ages, races and classes, ways of life, abilities can all crowd together" (ibid; Berman, 1986). They are also seen as democratic spaces which facilitate freedom of action, free speech and the expression of citizenship rights (Carr et al., 1992).

Non-exclusivity is the defining feature of public space, which, as well as being its greatest strength, can also prove its fatal vulnerability. Public space, can, "over time, be colonized or dominated by particular groups or interests, thereby losing its inclusive status" (Worpole and Greenhalgh, 1996: 15-16; Lyman and Scott, 1967: 239-40). One of the most effective ways to mould the human ecology of cities is through the ownership or control of property, land use and commerce (Berman, 1982; Davis, 1990). As shown in Chapter 4, during the last decade, the wholesale de-regulation of alcohol-related leisure

[73] British Crime Survey data has shown that the very highest risks of victimization are borne by those who share some combination of the following characteristics: young; male; single; unemployed; frequently visiting nightclubs or pubs; high levels of alcohol consumption (Budd, 2003: 11).

led to its ever greater colonization of urban space and time. Mono-functionality emerged as a key indicator of the shift towards increasingly privatized night-time space (Sennett, 2000), influencing "who uses it, who feels welcome to use it, and who knows better than to try and use it" (Hannigan, 1998: 192):

"In the bars around here you simply can't find a seat or hold a conversation because it's too loud. They were talking about opening a jazz or blues club, but people who want that aren't going to come down here. There used to be some good restaurants but they are either closing, or dumbing down, or just turning into bars, because the type of people who come here now just want to drink. The people who used to come won't come these days because they don't want to socialize with people who are heavily drunk or heavily drugged" Les (city centre resident North West).

The density of licensed premises forged by market forces gave rise to a form of functional apartheid within which the alcohol-focused bar and club scene dominated. A process of social 'cleansing' occurred as areas were appropriated by large crowds of consumers. Competition between the many, basically similar, operations led to drinks promotions and increased pressure to fulfil the expectations of core consumers. Laissez faire spawned a 'tyranny of the minority.' This mass appropriation of night-time public space now:

"...affords opportunities for idiosyncrasy and identity. Central to the manifestation of these opportunities are boundary creation and enclosure. This is so because activities that run counter to expected norms need seclusion or invisibility to permit unsanctioned performance, and because peculiar identities are sometimes impossible to realize in the absence of an appropriate setting" (Lyman and Scott, 1967: 237)

Yet, sub-minority consumers can find their opportunities for idiosyncrasy thwarted by commercial homogenization and invasion by the wider body, as (arguably) occurred in the case of Manchester's Gay Village (Hobbs et al., 2003: chaps 2-3; Moran et al., 2003).

Although the commercial purification of the night-time high street has become at least as virulent as its day-time counterpart, symptoms of the process continue to diverge. Both arenas place strong emphasis on consumption, leisure and spending, and, though ostensibly open to all, both are characterized by inequality of access, intolerance of diversity and minority groups, and the exclusion of non-consumers:

"Recently, I looked out of my window and saw a girl kneeling down in some sick, giving this guy a blow-job. She was so drunk she didn't really know what she was doing. I felt like chucking water over them. Now I'm not a prude, but, y'know, it really was a sorry sight to see. But that just said to me a lot about the way this area's gone" Emma (town centre resident, West Midlands)

Difference is manifested in consumer reactions to danger. In a fundamental departure from the day-time setting, consumer purification of the *night-time* high street has corresponded with an increase, rather than decrease, in danger, conceived here (following Jermier, 1982: 198) as "an objective property of urban time and space grounded in the interpersonal interactions of the inhabitants of that time and space."

"Not for me, thanks" (Avoiding the Night-time City)

PH: Do you ever go out in West Road?

Tony (local, age 27): "Nah, it's fulla' scum"

One of the most significant drivers of high street development has been the 'honeypot effect' through which areas attain local and regional renown as epicentres of entertainment and excitement (see Chapter 8; Hadfield and contributors, 2005b). Many of these areas also attain more negative reputations as hot-spots of violent crime (see Chapter 1). As a result of the core consumer group's domination of both licensed premises and public space and their often aggressively hedonistic demeanour, other citizens may feel effectively excluded from participation in nightlife. Research conducted in a number of cities including Nottingham (Oc and Tiesdell, 1997), Leeds (Spink and

Bramham, 1999) and Swansea and Cardiff (Thomas and Bromley, 2000) has found that many people seek to avoid urban centres at night, perceiving them to be threatening environments dominated by drunken youths. Social incivilities (such as public drunkenness and urination) and physical incivilities (such as litter and vandalism) can generate fear in a large number of people by conveying negative messages about the social conditions in an area (Nasar and Fisher, 1993; Skogan and Maxfield, 1981; Warr, 1990; Wilson and Kelling, 1982).

In both Swansea and Cardiff, Thomas and Bromley (2000:1425) found that, "the concentrations of public houses and late-night clubs, and the principal transport termini were perceived to be especially problematic." In contrast to the initial 24-hour city expectations of increased feelings of security through the animation of public space, people expressed their "*highest levels of anxiety* with regard to the areas which were the *most populated* at night" (ibid, my emphasis). Thus, in the NTE, 'hot spots' of both fear and crime are found to converge in areas where social interaction is at its most intense.

One important lesson to be drawn from the fear of crime literature is that some people feel better equipped to confront danger than others[74] and that in many cases, "self-imposed precautionary measures limit mobility significantly" (Law, 1999: 570). Studies of the occupational culture of persons involved in a variety of dangerous work tasks further illuminate this issue. It would appear that those whose identities are strongly linked to their work and to the importance of impression management in front of colleagues may be more likely to find experiences of danger challenging, gratifying, or at least less threatening, especially when such dangers are confronted in a group setting (Fitzpatrick, 1980; Haas, 1977; Kinkade and Katovich, 1997; Mayer and Rosenblatt, 1975). There is some evidence to suggest that nightlife consumers whose experiences and identities are strongly shaped by co-consumption with friends, associates and peers, may similarly develop feelings of confidence and territoriality which permit greater capacity

[74] Thomas and Bromley (2000: 1422-1425) note that whilst the most frequent visitors to the city centre at night (young men) "consistently recorded the lowest levels of disquiet," the least frequent visitors (older people, especially women) "displayed the highest levels of anxiety." Such responses are a reflection of how people's perceptions of an area may well be influenced by factors other than direct experience (Girling et al., 2000; Hollway and Jefferson, 1997; Sasson, 1995).

for 'playful' engagement with fear and environmental danger in a manner denied to those otherwise socially situated (Carr, 1998; Graham and Wells, 2003; Green et al., 2000; Malbon, 1999; Valentine, 1989). As noted, this 'adventurous collective' constitute nightlife's core consumers.

The generation of fear (or indeed hostility) within local populations is essentially an exclusionary process which can have the effect of further undermining commercial diversity and discouraging wider participation in nightlife; an important issue for public order given that the very presence of socially and culturally diverse crowds may serve to 'normalize' the on-street environment and enhance informal controls (Jacobs, 1961). Widespread avoidance effectively ghettoizes nightlife areas, setting them aside for the more aggressive forms of youthful hedonism. Thus, the growth of the night-time high street (at least in its present guise) appears to have made our urban centres less accessible for the majority of citizens (Spink and Bramham, 1999), with fear of crime now presenting a "formidable barrier" (Thomas and Bromley, 2000: 1425) to the development of more diverse and inclusive nightlife.

Notwithstanding the above, some people may avoid the night-time high street not because they are fearful or annoyed about the activities that go on there, but rather because such activities simply do not (or no longer) appeal to them, or because what the area has to offer in terms of consumer choice, services and accessibility is simply inadequate to meet their needs. Such responses are unlikely to be restricted to older people, the guardians of children, and ethnic and sexual minorities. Many young and childless people may also find the city centre alcohol-focused bar and club scene of little appeal, and some may seek out the remnants of an alternative, peripheral and/or music-oriented form of nightlife (Chatterton and Hollands, 2003). As Jacobs notes, "duplication of the most profitable use" serves to undermine "the base of its own attraction, as disproportionate duplication and exaggeration of some single use always does in cities" (1961: 259).

Removing Disorder, Introducing Danger

"Granted that disorder spoils pattern, it also provides the material of pattern" (Douglas, 1966: 95)

In the context of the NTE there is overwhelming evidence to suggest that people's fears and avoidance behaviours do in fact often correlate with hot-spots and hot-times for violent crime, even though those who fear and avoid the most may, statistically, be least at risk (and vice versa).[75] It is therefore hardly controversial, I would contend, to regard the night-time high street as an ecological zone of objective danger.

In the above passages I associated dangerousness with communal spaces shaped by the logic of the market rather than by public regulation and the ideals of liberal democracy. Within this time-space environment, forms of comportment and practical consciousness have been nurtured (see MacAndrew and Edgerton, 1969) that are essentially anti-pathetic to that of normative (day-time) sociability. Yet, in relation to the social setting I describe, it is questionable whether the term 'disorderly' can be applied; issues of situated meaning arise when analyzing how behaviours that conform to the dominant expectations and orderings of their enacted environment might be so conceived. Within a human ecology devoted almost entirely to the pleasures of intoxication, the drunken, boisterous and violent consumer can hardly be regarded as "matter out of place" (Douglas, 1966; 1970). Such insights have a long heritage in ethnographies of place, stretching back to those scholars of the Chicago School who explained crime and delinquency, "principally by the effects of the isolation of certain natural areas" which fostered "a kind of surrogate social order, an alternative pattern, which replaced the workings of conventional institutions" (Downes and Rock, 2003: 71).

In order to illustrate this point it is necessary to distinguish between zones of danger and zones of disorder. The two categories are not mutually exclusive as areas can be, at once, both disorderly and dangerous. However, in the following paragraphs I will draw upon

[75] If only because avoidance offers the surest defence against victimization.

some classic themes in urban sociology to argue that, in relation to the night-time high street at least, disorderly public spaces are apt to be less dangerous than 'orderly' ones.

Mono-functional consumption-oriented zones of objective danger stand in stark contrast to the type of disorderly urban environments described within the pages of seminal urban scholarship (see Berman, 1986; Jacobs, 1961; Lofland, 1973; 1998; Sennett, 1990, 1996). In these various reflections on the urban condition and the uses and meanings of public space, one finds a variety of 'positive' conceptions of urban disorder. Here disorder (understood as chaotic, unpredictable and 'messy' social interaction) is regarded as intrinsic to a mature and sophisticated urbanity. Whilst purification of the city involves the zoning of activities into discreet functional nodes, disorder is characterized by an unstructured "jumble of concurrent events and peoples inhabiting common ground" (Sennett, 1996: 142).

The relations between persons fostered by this form of disorder are regarded by urbanist scholars as meaningful in so far as those who occupy public space are obliged to encounter and interact with diverse others. This confrontation with diversity serves to challenge individual beliefs and behaviours including timidity, prejudice and egocentrism. In negotiating diverse public space, one encounters people who are very different from oneself, including those in relation to whom one disagrees, disapproves or feels at least mild antipathy or fear (Lofland, 1998: 243; Sennett, 2000). This 'hard edge' to the city is celebrated by dint of its role in the development of a mature *pro*-social attitude. It is only through repeated encounter and negotiation with the Other that we are able to develop more urbane cosmopolitan sensibilities. As Sennett notes, "Anarchy is being brought into the city as a positive principle" (1996: 171). Schlör- a cultural historian firmly entrenched in the urbanist tradition- describes the archaic pull of big city nights wherein people found: "pleasure in the discovery of this new world and pride in having taken the decisive step out of the shelter indoors and onto the streets" (1998:56). For Schlör, this ability to negotiate disorder becomes integral to a "newly forming urban mentality" in which "the complete city dweller has to learn to master the night" (ibid).

Crucially however, in order to teach cosmopolitanism, public spaces must not be regarded as *too dangerous*. If an area is avoided by all but a like-minded minority who both shun and help to create danger, then "no lessons can be learned" (Lofland, 1998 Op cit.). Urbanists regard policing and other types of formal social control as of secondary importance in preventing crime. "Successful streets" characterized by positive disorder are understood to be, to a large extent, "self-policing" (Berman, 1986: 481; Jacobs, 1961; Sennett, 1996, Worpole, 1992) due to a greater efficacy of informal social control.

Such analyses find support amongst criminologists. Loader, for example, notes how in relation to young people's colonization of public space in other contexts, resolution of an area's problems may rely, "not so much better policing, as the development of economic and social conditions that enable the police to recede" (1994: 524). It is inescapable to conclude that the processes of commercial agglomeration, consumer colonization and cultural purification that have accompanied the de-regulation of the night-time high street have generated an array of social and environmental harms. There has often been a lack of strategic vision and a general neglect or failure to regulate in ways which might preserve "effective public custodianship of shared public spaces and facilities" (Taylor, 1999: 123). As Tim Hope argues, effective community crime prevention must be alert to issues of context, attending in particular to the establishment of the "necessary social preconditions through which individual criminal motivation or behaviour can be changed, or crime-related harms reduced through everyday, routine practice" (Hope, 2001: 421). The following model suggests how a vicious circle may have been set in motion:

Vicious Circles in the Criminogenic Purification of Night-time Public Space: a Hypothetical Model

The increase in alcohol-based leisure activity in the night-time high street acts as a crime generator, however, unlike in the day-time high street, the increased security risk fails to impact on businesses as it does not deter members of the core consumer group. The increase in objective danger and decreased diversity of facilities does however serve to deter other citizens, particularly those who do not share the social characteristics of the core consumer group perhaps by dint of their age, race, religion, sexuality or lifestyle.

General avoidance by the wider and majority population fuels commercial consolidation and cultural purification as the area comes to be regarded as an environment in which control and functionality has been ceded to the core consumer. This erosion of diversity serves to further sever the links between the area and its host communities leading to an atrophy of informal social control. Atrophy of informal control contributes to an increase in objective danger. Businesses in the area further direct their energies toward meeting the preferences of those consumers who are least deterred by, and disproportionately contribute toward, the generation of such danger. The area becomes even less attractive as a destination for other users and those seeking to develop alternative non-alcohol based facilities. The circle is repeated as new licensed premises enter the market.

Policing the Night-time High Street

"Peace and order in the streets of a town have always depended more upon individual standards of right conduct and the state of public opinion, than the size and efficiency of the local police force" (Salusbury-Jones, 1938: 126)

The above model accords in some ways with popular criminological understandings of an incivility-inspired 'spiral of decline' associated with broken windows theory (Wilson and Kelling, 1982). However, my model, with relates solely to the NTE, departs from such perspectives by providing little analytical support for 'quality of life policing.' To illustrate this point, let us consider the following extract from Wilson and Kelling's seminal paper:

"The wish to 'decriminalize' disreputable behaviour that 'harms no one' – and thus remove the ultimate sanction the police can employ to maintain neighbourhood order-is we think a mistake. Arresting a single drunk or a single vagrant who has harmed no identifiable person seems unjust, and in a sense it is. But failing to do anything about a score of drunks or a hundred vagrants may destroy an entire community" (1982: 35).

This logic does not transfer at all easily to a context in which the street population ('community') that is being policed regards public drunkenness as normative. Nightlife

consumers and the police will often hold divergent conceptions of order, "with tacit knowledge defining night-time public space as a zone of fun on the one hand and a zone of hazards on the other (Philips and Smith, 2000: 490). As one female police sergeant, with five years frontline experience of policing a city centre in the North West of England explained:

"It's like on that TV programme *Ibiza Uncovered*, or at football matches, in certain places it's acceptable to scream and shout and sing at the *top* of your voice. Although that behaviour could be classed as disorderly, if you've got four thousand people in one area doing it, it's obviously acceptable to them, and nobody's going to make any complaints." Jane

Resource Pressures and the Duty of Care

My observations of public order policing and interviews with officers of all ranks suggest, without exception, that a very large proportion of night-time incidents are alcohol-related in one way or another. Environments characterized by mass consumption of alcohol and other intoxicants place a disproportionate strain upon the resources of the police and other public services such the Ambulance Service and hospital Accident and Emergency Departments (AEDs).[76] A very wide variety of incidents can and do occur throughout the night and across all areas of the city, however the greatest concentration of 'emergencies' occur in nightlife areas, especially in the period after licensed premises "throw out." During such periods, police officers may be forced to prioritize their responses to criminal activity, in the sense of failing to respond to, or deciding to leave, situations they would otherwise have dealt with, because of an urgent call to attend an even more serious matter. Pressures can be such that resources are routinely diverted from other areas and policing priorities. As Stephen Green, Chief Constable of

[76] This point is illustrated in a national study of the impact of alcohol misuse on the work of emergency service and emergency health care workers including police, paramedics and A&E Clinical staff. The study found the NTE to be placing a significant and chronic strain on these agencies which impacted upon standards and the availability of services for the public at large (Alcohol Harm Reduction Group, 2003).

Nottinghamshire, told the Nottingham Crown Court:[77] "at the moment, the only way we can cope with the level of policing demand is to leave the outlying districts of the City Division short of police officers on a Friday and Saturday night" (Green, 2003: para. 10). As one PC from a Midlands city explained:

"From a public order bus point of view, unless it is something very urgent we won't leave the city centre. You just can't afford to, because you can guarantee that as soon as you start travellin' out, something will start happenin' that requires your attention. It depends how many officers you've got on, but we can be runnin' around all night, some nights, y'know, you need the presence there just so people can see ya." Jim

PH: "Under what circumstances would you leave to attend incidents outside the centre?"

Jim: "It would have to be a major disturbance for us to go; a violent incident. We wouldn't go for a burglary. We will not leave the city- no way!"

A persistent feature of the observation periods was that when I accompanied officers to an incident involving taking a person into custody, the officers were then removed from operational duty to 'book' the prisoner into custody and complete all paperwork pertaining to the incident. The time taken in the custody area would vary according to whether a queue of prisoners was waiting. Following procedure correctly might mean that, throughout the night, several hours were taken up without tangible outcome. Persons under the influence of alcohol presented particular challenges for operational policing in that their behaviour was both unpredictable and – as a general rule – not amenable to normal standards of reasoning to defuse conflict:

"If you've got a violent prisoner, it will take three of you to deal with one guy and there's no doubt about it, so that's three of us off the streets for however long it takes for it to calm down, get them booked in. It's a long process and if there's already one (prisoner) waiting and you're there with yours as well; there's only three cells here in the town and

[77] In a licensing case in which I participated, involving police and trade objections to the opening of a new nightclub in Nottingham City Centre.

the nearest space for more is fifteen miles away" Tony (Sergeant, 150,000 pop town, Yorkshire)

Dealing with alcohol-related incidents 'tied up' police resources – notably cells – for considerable periods of time. This was particularly true when a Forensic Medical Examiner (FME) declared a detained person unfit to be interviewed due to their state of intoxication. For officers on public order duty, even the most minor incident involving an arrest would require around one hour of non-operational time whilst in the station, additional to the time spent in dealing with the incident itself. On the streets, resource pressures could be such that officers were unable to act unless and until reinforcements could be mustered:

"It can be scary, if there's only two of you and there's four hundred people coming out of the clubs and you know that assistance is maybe five or ten minutes away. If a disorder situation does break out and there's not enough of my staff to deal with the situation...At the end of the day you need to protect people, because there's more public out there than there are police, so you need to protect the police" John (Inspector, seaside resort, South Coast).

This sense of vulnerability can inform decisions to arrest. As one male Constable told Nottingham Crown Court, "I would say that there are occasions when arrests do not take place because of the danger of inflaming a situation" (Brophy, 2003: para. 15). When facing both resource constraints and a disjuncture between their own conceptions of order and the expectations of the policed, officers have little option but to apply discretion in responding flexibly and pragmatically according to circumstance (Livingston, 1997):

"When it gets to smashing bottles and kicking over bins or, y'know, just jumping on innocent people who are walking past or queuing for a taxi or a bag of chips, then yes, that's where the line is drawn, because nobody, whether they are having a good time or not, has the right to just attack somebody else. You have to consider how many people are there to assist you and how badly the people are behaving...We would normally just

go up to them and warn them and then they just walk off; 'ok then!' and start doing it again" Mike (PC, 120,000 pop city South East).

The inability to adopt a 'hard line' approach due to the size of the crowds, social atmosphere and resource restrictions was lamented by some officers who regarded it as a ceding of police authority. As Rubinstein (1973: 166) notes, "For the patrolman (sic) the street is everything; if he loses that, he has surrendered his reason for being what he is":

"You do have to turn a blind eye, certainly more recently and that's purely due to the volume of people that are out on the street. It frustrates me and it frustrates other officers as well because they know that at the end of the day, if you are going to deal with someone effectively because they are being disorderly and they are committing whatever offences, they may have to be arrested. So they are doing things that in the past they would have been arrested for. But, you know that that officer is going to be taken off the street to deal with that and if we dealt with everyone who was behaving like that we wouldn't have anyone (officers) left on the streets. You do have to turn a blind eye and it gets frustrating" Paul (Sergeant, 90,000 pop town West Midlands).

In most instances however, a tolerant approach was regarded as simply realistic:

"We make a low number of arrests, but the opportunity is there to spend all night locking people up for drunken, loutish behaviour but you have to decide, is this behaviour normal? Is it actually going to develop into something more serious? Whilst we may not accept people urinating in the street, what is the alternative? If we were to arrest everybody who urinated in the street...there's thousands of people around, so the people that do find themselves under arrest by my team have *really* pushed their luck. Y'know, they've refused to stop fighting or they've started to fight with the officer. So I would say it's a low number of arrests, but lots and lots of tolerance and even more advice" Dave (Inspector, Greater London).

Indeed, some officers regarded a tolerant attitude as a prerequisite of the task and a mark of professional competence:

"My team are able to talk to people and control situations and they are good at defusing and talking people down. They've been chosen because they've got good experience and they're able to talk to people and they are tolerant. Now with the tolerance you may say, 'well perhaps you're condoning people's behaviour,' but we don't see these people in their normal day-to-day lives, we only ever see them when they are drunk or perhaps they've had drugs and they are not behaving. We don't know what their normal behaviour will be like, so we have to tolerate a little bit more and that's what we do. We don't know where they come from, or what walk of life they come from, we don't know what they do during the day. As I said before, anybody can find themselves in a situation that they don't want to be in, but they don't know how to get out of, and can end up getting themselves arrested. Most people are fighting for whatever reason that seems significant at the time, but they are such insignificant reasons that when they are sober they think to themselves, 'just what was I doing?' But that's the side of people that we never see" Mike (Sergeant, Northern city).

As well as attempting to manage the crime and disorder situation, police officers must attend to the casualties of the night. The duty of care burden associated with intoxicated persons can be onerous (as well as unpleasant) and falls primarily on the police, whenever, as is often the case, a person refuses medical treatment. In a fraught and emotionally charged environment, this duty can be difficult to discharge:

"You try and help people and all they want to do is fight with you because they don't want any help and it's a very difficult thing because police officers are just human beings. It's a very difficult thing to walk away from somebody whose got a broken nose and there's blood everywhere and they must be in pain, but if they are giving you loads of abuse, won't tell you their name, don't want you to get an ambulance, or won't even get in the ambulance, then what can you do for that person? It's very difficult for officers, you think 'his nose must be killin' him!', but people just don't want your help." Jane (Sergeant, West Midlands city).

In addition to the walking wounded, police must also deal with people who are physically incapacitated through intoxication. Such people may be taken into custody, where, if they have visible injuries, they may require the services of an FME. Custody officers are then required to undertake frequent, labour intensive checks on the welfare of such persons, including 'rousing' to ensure consciousness.

These observations illustrate the scale and difficulty of the crime control, crowd management, prioritization, and duty of care responsibilities vested in the police and other frontline public services. To borrow an economist's term, intoxication, and primarily alcohol consumption, carries with it 'externalities' – costs that do not accrue to the leisure and drinks industry, and which are therefore unlikely to be taken into account when companies make cost/benefit decisions about their business strategies (Bakan, 2004). This point is made forcibly by Stephen Green in relation to Nottingham City Centre:

"The people who need us most are being deprived of our service by organizations who require our service only to be able to continue to make large profits. The fact is that 100,000 sober people in Nottingham City Centre during the day-time cause the police no great problems. However, as soon as you put alcohol into the equation the City becomes a very different, and much more violent, place" (Green, 2003: para. 11).

The Restless City

In addition to the expropriation of emergency services, the night-time high street may also have a more direct impact upon residential communities. "Duplication of the most profitable use," can, as Jacobs predicted (1961: 259), take its toll on the quality of life in central urban areas:

"During the day the place is dead and families don't come down anymore. Since all the bars sprang up, this area is just geared to beer and the night-trade. We don't even have basic facilities. The only other facility we've got down here is the newsagent" Sarah (city centre resident South West).

A comparative study of mixed-use residential and leisure districts in four Northern European capital cities (Berlin, Copenhagen, Dublin and London) found that all areas "had similar problems...especially in relation to noise, crowds, litter and social disorder. Each locale had experienced a conflict between business and residential interests" (Central Cities Institute, 2002: 7). The authors state: "it is striking that in each of the case study areas, problems were associated with a concentration of licensed premises" (ibid: 81). In my interviews, residents living in close proximity to the night-time high street were forthright in describing the degradation of their surroundings:

"We threatened the city council with getting the press down to photograph Brass Street residents cleaning the streets themselves, because we're so sick of the stuff that is left. What they don't do is spray the streets and these streets are covered in grease because it's food that's chucked down and you can't sweep that, so it gets trodden on and when it rains, you're actually sliding about on the pavement 'cos its so thick. It's just disgusting. You go to walk the dog in the morning and the glass and the filth and the rubbish, even when you're coming back about 10 or 11 o'clock. You think, 'all the shoppers coming down here must think this place is a slum." Louise (city centre resident South East)

Nigel used dark humour to recount his experiences:

"The only good think about vomit is the very next day it's all gone. Y'know, sometimes you have to step over half a dozen vomits to get to my front door. But the next morning it's gone. But that's not the council cleaning it up, that's the rats and the pigeons that finish it off. It's sickening. If you come down Bain Street about 5'oclock in the morning that's when all the rats come out; 'cos, I've been awake at that time and I've looked out of my bedroom window, and I can't believe the size of these rats! They know what time to come out and that's when all the clubbers have gone home" (city centre resident North East).

Noise nuisance is a recurrent theme of residential complaint. From early evening through to the early hours of morning, noise sources may include sounds emanating from venues

and customers drinking outside them; crowds of pedestrians on the street; traffic noise, including car horns, stereos and sirens; ventilation systems; the sound of glass bottles being dropped into skips; and the purr of street cleansing machines as they converge on the area once revellers have dispersed. These sounds offer little respite for the sleeper before the rumblings of the new day begin.

The Guidance recommends that the appropriate way to deal with noise and nuisance in residential areas is to attach various conditions to premises licences (DCMS, 2004b: paras 7.38-7.46). However, given that many residential concerns relate to activities occurring on the streets (rather than simply in relation to noise emissions from within premises), it is difficult to see how licensing conditions relating to noise might fully address the issue:

"It's the people who are causing the noise rather than the venues, just the sheer number of them. It's also the loudness of the music in these bars and so their hearing shuts down, so when they come out they're just shouting and screaming at each other and plus they're not just tipsy, they are *blind* drunk" Scott (city centre resident, North East)

Where due regard is paid to the individual merits of an application, the Guidance does allow for limits to be placed upon the opening hours of premises. However, in keeping with the Government's general stance on extended hours, this interventionist option is deemed permissible only in very restricted and legally contestable circumstances (para 6.8; see Hadfield and contributors, 2005b).

The following case study explores the neglected topic of vehicular-traffic related environmental stress and criminality in a mixed-use leisure/residential area:

Cruising Time

Central London's congestion problems are widely known and commented upon. Demands from residents, businesses, and visitors create tremendous pressure on the number of on-street parking spaces. From 17 February 2003 a congestion charging scheme came into effect from 7am to 6.30pm during weekdays in an attempt to reduce

traffic levels during day-time hours (hence the scheme did not directly affect *night-time* traffic levels). Westminster City Council (WCC) has a statutory duty to manage on-street parking seven days a week with enforcement duties contracted out to a company which supplies traffic wardens. 'Normal' street parking controls run from 8.30am to 6.30pm. Pressure to control more areas for more of the time is increasing however, especially in the West End. West End streets remain noisy and congested with traffic until around 4.30am and anecdotally, many who work in the area say that it is often busier at 3am than it is at 3pm, complete with traffic jams. It is difficult to compare the two time periods with regard to parking however, because during the day people either pay and/or are time-limited in terms of parking, whereas at night there is no time limit on visitor parking. There may also be seasonal factors. However, in the West End, residents' permit zones and double-yellow lines are patrolled 24-hours a day. Parking meter bays and pay and display spaces are not controlled at night however. As a result, cars are often present for longer periods.

WCC are investigating the potential for further controls on street parking during the night-time in the West End, largely due to problems voiced to WCC by late-night businesses and their employees (including restaurants and theatres as well as nightclubs, for example) who complain that parking is difficult to find. Parking has also been seen as a means through which to address particular problems caused by illegal minicabs in the West End. Joint operations with police, bailiffs and other agencies are now carried out on a regular basis. Around forty parking attendants patrol the West End during the night (out of a total of around fifty for the whole borough, and around two hundred and fifty during the day).

In the following paragraphs I describe the environment in which the parking attendants are tasked to work. This provides some insight into the 'feel' of an important aspect of the NTE in London's West End:

In one particular area where a one-way system is in operation, the presence of a number of nightclubs and late-night takeaways acts as a magnet for traffic. Groups of young men cruise the area in glistening dropped-top convertibles and other sporty or 'prestige' cars.

The cruisers aim to attract as much attention to themselves as possible, both visually and audibly - hence the mandatory 'bored out' exhaust pipes and thumping bass-heavy sound systems. When stood in the area for any length of time, one sees the same cars repeatedly circulating. The occupants stare, whistle and shout at pedestrians, addressing their attention to young females in particular. Sometimes the cruisers will stop to talk to people on the street or simply to hang out and 'pose' next to their cars. These activities can last anything from a few seconds to half an hour or more. The cars are almost always parked illegally on double yellow lines, or double or treble parked in a manner which partially blocks the thoroughfare and reduces the speed of the traffic flow. Other drivers become frustrated and angry, prompting the sounding of horns and vocal remonstrations.[78]

At the same time, the area also becomes a magnet for a typically more modest and sober fleet of vehicles- late-night London's illegal minicab trade. Private cars in various states of repair driven by their solitary male occupants crowd any available pavement space, whilst their agents ('touts') approach anyone who looks like they might be enjoying themselves with the misrepresentative query of "taxi?" Occasionally deals are struck between the drivers of cruising vehicles and loitering men, small items are passed surreptitiously from car window to pocket. People entering or leaving licensed premises are approached by touts, dealers, homeless persons requesting money and other people simply giving out flyers. Some revellers negotiate with the touts or 'taxi drivers' and are driven away. If traffic wardens or police arrive the cruisers and minicabs simply move on, only to complete the circuit again and re-park once the coast is clear. Basic conflicts of interest are revealed between those tasked with maintaining highway order and those deriving social and economic capital from transience, concealment and the unfettered utilization of mobility and immobility. Deference and compliance with authority can never be guaranteed.

[78] The issue of cruising and traffic congestion in nightlife areas with through traffic is rarely addressed in UK literature on the NTE or even in wider discussions of the 24-hour city. This contrasts with debate in other countries such as the US, where cruise-related problems are seen as endemic (see Berkley and Thayer, 2000). This omission may well reflect implicit and culture–relative assumptions of British researchers regarding the central role of alcohol in nightlife and its relationship to urban disorder- issues which tend to obscure other contributory factors in the generation of environmental stress (see Elvins and Hadfield, 2003).

Even at the heart of a world city, the late-night population is relatively parochial. The wardens and their public occupy a distinct and socially restricted human ecology in which time-space routines converge. Thus, associations between the regulator and the regulated will not always be fleeting. Amidst the series of encounters that occur week- in, week-out, on-going relationships emerge between the protagonists. In nightly contestations over the appropriation of public space, experiential concerns of freedom, respect, control, identity, intimidation, violence and commerce find expression and immediacy face to face. Anger and resentment become personalized in grudge matches between patrolling wardens and recidivists. Like other members of the extended police family, the night-shift traffic warden is licensed to challenge and disrupt the business and life world of the streets. This is a risky task and one which can have serious personal consequences.

Physical and verbal abuse of attendants is not uncommon whilst they carry out their work. Attendants reported suffering significantly more intimidation at night, with verbal abuse so common as to be routine, including threats from unlicensed minicab drivers and touts. Physical assaults and threats sometimes involve weapons and even firearms. In 2001, a warden patrolling the one-way system described above was so badly beaten that he was unable walk for two months. Because of greater security concerns at night, attendants work their beats in pairs as opposed to singly during the day-time. They also record offences via a handheld terminal and give a periodic report of their location. The contractor records all incidents of physical assault as part of its health and safety obligations. Monthly figures for May through to November 2002 showed an average of 18 assaults on parking attendants per month (from a total of 129 over the period), with a peak month of 30 and a low of 14. During the seven months concerned, 18 assaults (14 per cent) occurred between 6pm and 6am. Despite these problems, police support has not been forthcoming and even though special operations have been mounted in which the wardens turn out in force, enforcement is failing. In 2003, the contractors informed WCC that parking restrictions around this location could not be enforced late at night as the area was considered to be too dangerous for their wardens to work.

Eyes on the Street

Simply by going about their daily lives, residents act as 'place managers' (Connolly, 2003), attachment to their homes and communities encouraging them to perform a territorial function with regard to surrounding public space:

"When I hear screams at three o'clock in the morning my instant reaction is to get out of bed and see what's going on. There's a lot of unreported crime goes on round here, especially violent disorder, you'll hear that from everyone you speak to, lots of vandalism, criminal damage" Mike (city centre resident South East)

However, 'natural surveillance' (Jacobs, 1961) can only be effective if residents receive adequate support from the police and other enforcement agencies. In many cases, the problems become so incessant that residents give up and stop reporting all but the most serious of incidents. This 'call fatigue' can be brought on by frustration at an apparent lack of response. In such circumstances, residents may feel driven to take direct action:

"I had a taxi parked underneath my window for about twenty minutes and he was hooting his horn and had the bass turned up on his stereo. In the end I just lost it and threw a bucket of water down on him. He knew he'd been out of order and just moved on." Nigel (city centre resident, North West)

However, residents can sometimes feel intimidated in the face of a nightly invasion of their area and may be deterred from asserting their territoriality for fear of reprisal:

"I'm really scared here in my own home. Last week one of them comes into my garden and starts urinating, so I start chasing him with a floor brush. His mate turns round and starts threatening to beat me up" Lucy (city centre resident East Midlands)

I was also told of the intimidation of residential complainants at the hands of licensed businesses:

"I saw some of the staff from *Bliss* putting a dead rat on the windscreen of my neighbour's car... When I rang the manager of *Toast* to complain about the noise he just slammed the phone down. Ten minutes later he was kicking and punching on the door of my flat" Elaine (city centre resident North East).

This open and visceral conflict is fuelled by the ghettoizing and profit-maximizing compulsions of the night-time high street. In the context of corporate invasion, 'the problem' can easily be re-framed as emanating from 'intolerant' residents, rather than from the business community and its patrons. Both the trade and more entrepreneurially-inclined local politicians will often attempt to portray residents as narrow-minded 'yuppies' who choose to live in central urban areas, only to complain about what they find. The message conveyed is stark: those who don't like things the way they are should move out. This view is, of course, highly controversial and contestable (see Chapter 8), not least because, failure to protect the interests of residents may serve to compromise the broader urban regeneration agenda (see Chapter 4; Central Cities Institute, 2002; GLA, 2002a; 2002b; Hadfield and contributors, 2005a; LGA, 2002).

For many participants, these darker sides to the NTE are, as one 19 year old male consumer put it, "just the way things are." Nightlife in Britain tends to be socially exclusive. For most of the population, the worlds of day and night never meet. Problems for those with a vested political and/or economic interest in the nocturnal status quo begin to occur only when non-participants, such as national and local media, civic and amenity societies, councillors, pressure groups, or the parents of assault victims begin to voice concern. As discussed below, this is typically followed by 'knee jerk' reactions and publicity stunts to assuage public anxiety.

Anti-Social Behaviour and the Errant Consumer

The ethic of free trade and doctrine of consumer sovereignty inherent to neo-liberal governance eschew market intervention and promote forms of public policy in which the control of consumption and any harms relating to it become "a responsibility solely of the individual consumer" (Room, 1997: 10). Once an 'irresponsible minority' has been

identified, "highly discriminatory" measures can be taken against "specific groups of people in certain symbolic locations" (Crawford, 1998: 155). In contrast to the day-time economy and its criminalization of the non-consumer, the most likely recipients of punitive action in the night-time high street are, of course, "those most thoroughly seduced of consumers, to the tune of a dozen lagers" (Hobbs et al., 2003: 273). As political disquiet about levels of violence in the high street gathered pace (see Chapter 1), governmental intervention concerned itself with reassuring an anxious electorate, criminalizing errant consumers and encouraging toothless self-regulation.

The trade were quick to respond to the new political climate, which, although seemingly hostile to their interests, also served to re-direct debate in convenient ways. As Pearce and Tombs note, "corporations and their representatives themselves play dominant, often covert, roles in the development of regulations to which they are then subjected; they then play key roles in negotiating the ways in which, and the extent to which, such regulations are actually enforced" (1997: 103). Trade organizations such as the BBPA, The Portman Group and BEDA were amongst the most vociferous critics of those operators who offered cut-price drinks promotions. With the 'binge drinker' now labelled and enshrined as folk devil (Strategy Unit, 2004), the 'happy hour' became the industry's sacrificial offering to the regulatory agenda. Trade organizations rushed to issue 'guidance on good practice' to operators and launch 'public education' campaigns warning consumers of the perils of binge drinking.[79] Despite their doubtful efficacy, such exercises in 'corporate social responsibility' involved measures that "nobody's going to be against, and everybody's going to be for" (Chomsky, 2002: 26), allowing the industry to convey the impression that it was 'cleaning up its act.' Ultimately, Central Government eschewed the legislative and interventionist route and allowed the industry to elect its own modes of regulation in the form of '*voluntary* codes of practice' (DCMS, 2004b; Strategy Unit, 2004). For trade and Government alike, the hunt for 'bad apples' took its place alongside the extended hours argument as the most convenient and superficially plausible

[79] Measures which reviews of the scientific evaluation literature have shown to be particularly ineffective in reducing levels of alcohol-related harm; the most effective strategies involving legislative controls combined with strict enforcement (see Academy of Medical Sciences, 2004; Babor et al., 2003; Edwards et al., 1994; Room, 2004).

smokescreen through which to obscure the criminogenic effects of routine business practice (Currie, 1997; 1998; Taylor, 1990).

In addition to self-regulation, the State-industry nexus sought to promote 'quality of life policing' as the best way to respond to the issues facing the night-time high street. Attempts were made to introduce a greater uniformed presence, tasked with enforcing rules and imposing 'standards of behaviour'; developments closely aligned with the trend towards private sector funding and control of crime reduction.[80] There was an increasing tendency amongst police forces to conduct short-term high profile 'zero tolerance' operations, a trend encouraged by the introduction of Fixed Penalty Notices (FPNs) and exclusion orders for 'anti-social behaviour' (see Hadfield and contributors, 2005b). Such approaches were easily understood, widely publicised, and had a populist appeal in seeming to 'tackle' or 'treat' various symptoms of an 'anti-social society' (Colls, 2003) characterized by individual irresponsibility and moral decay. During the summer and Christmas periods of 2004, the Home Office Police Standards Unit instigated high profile policing operations in town and city centres across England and Wales. These campaigns focused upon localized hot-spots and were reactive in their emphasis upon individual offenders and unscrupulous venues found to be encouraging excessive consumption.

The renewed emphases upon self-regulation and high profile policing met the convergent needs of a Government anxious to gain political capital from being seen to 'clamp down on drunken yobs' by putting more 'bobbies,' or at least, 'uniforms' on the beat, and an industry keen to demonstrate its socially responsible credentials in ways which had minimal impact upon the bottom line. As one police licensing Sergeant put it:

"The philosophy, of course, behind the Government's line is that you can sell as much booze as you want, for as long as you want, and that the police will have more draconian powers to mop up the disorder." Peter

[80] This has involved an extensive array of components including hardware such as CCTV and bottle banks; personnel in the form of street wardens and targeted, private sector funding of the public police; through to transport initiatives and the introduction of Business Improvement Districts (see Hadfield and contributors, 2005b).

This reactive approach does not find favour with all police officers, some of whom appear particularly well placed to comment. Assistant Chief Constable Rob Taylor of Greater Manchester Police (a former spokesman for ACPO on licensing) told me:

"If you look at the new legislation, there are some pretty strong powers in there, new police powers, enhanced powers. Now, our view, as we've said, is we want to *prevent*, we want to *reduce*, we want to be *pro*active we don't want to have to be reacting after the event. We don't want a weak system that allows the wrong type of premises to be in the wrong area, open for the wrong time and a load of crime and violence to emerge out the back of it and for us to have to start using our powers *unduly* to try an' put the wheel back on. That's a point I'd like to make very very forcibly."

Taylor's comments on the efficacy of the 'thin fluorescent line' echo those of the famous urbanist scholar Jane Jacobs, who noted that "no number of police can enforce civilization where the normal, casual enforcement of it has broken down" (Jacobs, Op cit.: 41).

There seems more than a hint of hypocrisy in focusing the public policy response upon a consumer group who have accepted the invitation to transgression offered to them by business, Central Government (and in many instances, Local Government) in the name of post-industrial progress. Young adults in Britain (and especially in non-metropolitan areas) may have few viable alternatives other than to partake in alcohol-focused forms of night-time leisure. Within a degraded high street environment, young people, as well as offending, also bear the brunt of victimization. Once 'situations get out of hand' and the corporate 'brandscape' no longer performs its intended function of promoting positive civic imagery, this same group of consumers who were initially welcomed with open arms, increasingly find themselves criminalized. Tabloid newspaper reporting reflects these themes. Under the triumphant headline "Yobs to be Caged," the *Daily Express* reported how police in Blackpool and the Greek resort of Faliraki plan to introduce "giant mobile street cages, which can detain up to fifty troublemakers at a time" in order to compensate for a lack of cell space (Pilditch, 2003: 27).

As Lupton notes, in response to Douglas's work on 'risk and blame': "people may sometimes be blamed for being 'at risk' just as they were once blamed for being 'in sin'" (1999: 49). Furthermore, blame may be apportioned to others, including one's adversaries, "as a means of diverting attention away from oneself (ibid)." As we saw in Chapter 4 when tracing the development of the Act, the distinct reluctance of Central Government and the courts "to penalize the 'suppliers' of crime opportunities contrasts markedly with the enthusiasm with which their 'consumers' are punished" (Garland, 2001: 127). Such approaches also play a role in categorizing those persons as disorderly and dangerous and drawing political attention away from other types of offender and offences (Harcourt, 2001). As Crawford asks, "where is the 'zero tolerance' of white collar crimes, business fraud, unlawful pollution and breaches of health and safety?" (Op cit.), or, I would add, criminogenic development and trading practices.

The latter point may be illustrated by reference to Cheshire Constabulary's 'Operation Yellow Card' of December 2003, described on the front page of one local newspaper as a 'crackdown' involving "a tide of fifty officers washing through the town centres of Macclesfield, Wilmslow and Knutsford." This exercise in metaphorical cleansing resulted in forty arrests, "the highest number ever recorded in a single weekend" (Macclesfield Express, 2003: 1). Interestingly, the local police had recently withdrawn their objection to the opening of a large new theme bar, which despite contributing monies to the local crime prevention budget and making assurances to a Crown Court that it would bring 'family entertainment' to Macclesfield town centre (see the description of this case in Chapter 4), had, according to the same newspaper, been the site of "a glassing, a five-man brawl, three reported assaults and five crimes of theft and criminal damage" within the first five months of trading (ibid: 8).

In raising such issues, I do not wish to deny the importance of personal responsibility or individual agency by suggesting that consumers are blameless or that their actions are in some way structurally or spatially determined. Rather, my aim is simply to offer a rejoinder to official discourse and to suggest why effective long-term responses to the problems of the night-time high street may never be found within its narrow and

politicized boundaries. In Part III I explore the workings of a system of adjudication in which such matters are repeatedly mooted, ostensibly in furtherance of the public good.

Part III

Contemporary Contestations

Chapter 7

The Combatants

Licensing matters are integral to the contestation of the night. As a method of constraining the actions of a criminogenic industry, their import and efficacy cannot be over-emphasized.[81] In this, the first of three chapters concerning licensing litigation, I profile various categories of witness in the licensing trial (the role of benches and advocates is discussed in Chapter 8).[82] In describing participants, I employ 'ideal types' (Gerth and Mills, 1946). These are not caricatures, but rather abstractions which accentuate and bring together a number of commonly observable characteristics to form a coherent whole. Ideal types do not correspond exactly with empirical instances and make no claims of exhaustiveness. Rather, they act as sensitizing constructs (Blumer, 1969) with which concrete examples of phenomena might be compared (Coser, 1977). The analytical value of these typifications will become further apparent in Chapter 9, in which I argue that regulatory outcomes are accomplished, in part, through strategic interactional performance, as shaped by the personal identities, skills and resources of social actors.

Residents and Non-Competitor Businesses

In recent years both local and central government have encouraged the mixing of land uses within town and city centres (see Chapter 4; DETR, 2000; DoE, 1996; Urban Task Force, 1999). Homes, offices, shops and other businesses are now often located in close proximity to night-time leisure facilities. Chapter 6 indicted how, in central urban areas,

[81] For general reviews of medical and scientific opinion regarding the importance of direct market intervention in public policies involving alcohol see Academy of Medical Sciences, (2004); Barbor, et al., (2003); Room, (2004).

[82] Licensing court proceedings are also attended by non-participant observers, many of whom listen intently to every twist and turn of events. These observers include supporters of both sides; students; local journalists, trainee solicitors and legal secretaries recording dialogue in short hand, and barristers' pupils who come to learn the skills of their mentor. In high profile Crown Court cases one also finds 'spies,' who come to gather information for their own future purposes. Spies may include executives from competitor companies, junior lawyers and police officers from other areas.

the conflict between night-time leisure operators and other stakeholders may become acute. Often the most impassioned and vocal opposition to new licensed premises will come from individual residents or loose affiliations of residents formed in opposition to a specific proposal.

Residential development has involved processes not only of re-population, but also of gentrification (Edwards, 2000; Tallon and Bromley, 2002; Wynne and O'Connor, 1998). Residential objectors principally arise from the ranks of these middle class incomers or from residual middle class groups wishing to resist the tide of commercial encroachment.[83] Residents' associations and more informal residential coalitions will typically attempt to mobilize local public opinion and lobby police and local authorities for support in their objections. In objecting to a new licence application or requesting that an existing licence be reviewed,[84] local residents and day-time businesses will often highlight issues such as noise nuisance, disturbance, litter, fouling, criminal damage and the fear of crime, which, they claim, are related to late-night revelry and the customers of licensed premises:

Linda (thirty two), an advertising executive, lives with her school teacher partner Simon (thirty five) and their two-year old daughter Holly in a third storey waterside apartment. The couple purchased their newly-built home, part of a converted warehouse, from the property developer and have lived there for almost five years. Both enjoy the convenience of living close to work, and particularly before Holly came along, the opportunities for after-work socializing. The couple like life in the city as it allows them

[83] It is an unspoken reality that objecting to licences is a largely middle class pursuit with the voices of working class residents rarely heard. I found this observation to hold even in instances where the usual lobbying practices work in reverse, with the police or local authority actively seeking residential support for their own objections. In one case, a block of twenty seven council flats shared an adjoining wall with a former bank earmarked for conversion into a theme bar. Upon attendance at a case briefing I found to my surprise that the police had made no attempt to mobilize residential opinion within the flats. Upon querying this I was informed that such approaches would be futile as the residents held "anti-police attitudes" which, it was felt, precluded them from co-operating with the police even in circumstances (presumably) of their own advantage.

[84] The Act provides that 'responsible authorities' (such as the police or the fire authority) and interested parties (such as residents living in the vicinity of the premises and local businesses) may, at any stage following the grant of a premises licence, request that the licensing authority review the licence because of problems arising at the premises in connection with any of the four licensing objectives (s51-s53; see Chapter 1). In reviewing a licence, the authority has a range of statutory powers at its disposal. These powers permit a graduated response, from modification of conditions through to revocation of the licence.

to be, and to feel, close to the centre of things: shopping; transport hubs; cultural and sports facilities etc. Products of a suburban upbringing, they are also drawn to the edginess and anonymity of the city. As young adults it permits them a feeling of escape from the restrictive cocoons of security that family and friends wove for them in early life.

Yet, things are beginning to change. Life in the flat has become more stressful over the last two years as new late-night bars have sprung up along the waterfront. Linda and Simon used to enjoy wining and dining at Booth's and some of the other local restaurants, but now the area is swamped with seventeen to twenty five-year old drinkers, six nights of the week (only Tuesdays are relatively quiet). The social atmosphere in the area has become more wild and rowdy and the longer-established bars and restaurants have had to adapt, going more 'down-market' in order to cater for the new crowds. Getting Holly to sleep at night is a constant battle as the infant is repeatedly woken by violent nocturnal sounds: shouting and screaming, horn-blowing taxis, pumping car stereos and the sirens of speeding ambulances. Revellers have taken to running up the metal fire escape at the back of the flats and their favourite trick is to urinate down onto the residents' cars. Linda and Simon still love their flat, but the urban dream is beginning to sour. If this new bar opens it could be the last straw.

Although they have the right to object to licence applications, it can be very difficult for residents and small businesses to maintain their resistance to encroaching development. For those living near to city centre drinking circuits and other popular nightlife areas, the necessity to repeatedly object to new applications and variations can become stressful, frustrating and time-consuming. Once they embark in correspondence with an applicant's lawyers, issues surrounding the apportionment of blame for environment stress, previously assumed to be self-evident, are immediately rendered ambiguous (see Chapter 8). Of course, the residents may have their own legal representation, but specialist barristers are few in number, costly, and sometimes reluctant to offend potentially lucrative (trade) clients.

Considerable effort is required of residents in preparing and presenting their case. Perhaps the two biggest obstacles are time and money. Residential objectors usually

require financial and technical support from third parties, typically police, local authorities or trade protectionists. This form of co-operation can provide access to otherwise prohibitively expensive lawyers and expert opinion. If such backing cannot be found, the battle may be lost before it ever begins, as most objections are dropped. On rare occasions residents will go it alone, ploughing through voluminous paperwork filled with legal and technical jargon. Sometimes residents will even present their own case. Such courses of action are risky, as even if they can avoid incurring substantial legal expenses of their own, the financial costs of losing, which may include an order to pay the applicant's costs, can be immense.

Courts, and particularly Crown Courts, may be located far from the objector's homes. Furthermore, hearings are invariably conducted during the day-time and on weekdays, requiring many lay objectors to arrange time off work or place family commitments on hold in order to attend. Proceedings often go more slowly than predicted and the witness may be required to wait for several hours to give their testimony. Much of this waiting may remain unexplained and they may wait in vain, only to be told to return to court the next day. Pursuit of one's objection requires considerable commitment and sacrifice, including a preparedness to be guided by the dictates of the court and its open-ended use of time. For these reasons, many residential objectors are drawn from the ranks of the more affluent retired.[85] As well as being 'time-rich,' well-informed, articulate, and committed, objectors need strong wills, thick skins and an even temperament in the face of hostile and sometimes intimidating cross-examination which can involve attacks on their personal integrity (see Chapter 9). Even if the case is won in the Magistrates' Court, the applicant may launch an appeal and the expense and trauma begins again in the Crown,[86] and even High Courts. Licensing cases are typically fought for several months, but can last for over two years.[87]

[85] This social profile renders objectors vulnerable to the accusation that their views are not representative of local opinion (see Chapter 8).

[86] This was very apparent during the period of my fieldwork. However, as noted in Chapter 1, following the Act, parties no longer have leave to appeal to the Crown Court.

[87] Monbiot (2000: 130-131) raises similar concerns regarding the court-related experiences of lay objectors in planning appeals.

Campaigners

Colin (sixty one), a retired university lecturer, has lived in Oldtown since his student days in the 1960s. Well-travelled, articulate and IT literate, he lives the frugal lifestyle of a middle-class bohemian. Colin has always been drawn to public life and has been an active supporter and organizer of various left-wing political causes. He devotes considerable time to his role as chairman of the local Civic Trust. The purpose of this organization is to campaign for the preservation of Oldtown's historic centre. Colin has been monitoring trends in licensing over recent years and is concerned about an encroachment of branded bar chains which he sees as undermining the distinctive and genteel character of the area. At a recent meeting, members of the Trust voted to oppose all new licensing applications for the centre of Oldtown.

Campaigners are typically local community representatives, including politicians (MPs and councillors), who give evidence on behalf of their constituents. The most prominent campaigners are those who represent residents', community and amenity societies. Examples of such groups from across England include the Durham Civic Trust, the Headingley Network (Leeds), the Redland and Cotham Amenities Society (Bristol) and the Soho Society. Groups will often cast votes in relation to the pursuit of objections. Where a strong oppositional stance can be established and maintained, representatives of such groups may make frequent appearances in licensing trials as objection witnesses. These activities are supported by *Open All Hours?*, an informal network of amenity group members who lobby Central Government on licensing matters and exchange information of assistance to objectors.

Police

At one time, the police rarely objected to new licence applications provided they were satisfied that the premises would be competently operated by 'reputable people.' In recent years, some police forces have become more militant. As noted in Chapter 6, the explosion of the high street leisure market has placed a considerable burden on police resources and many people within local communities feel intimidated by activities in

night-time public space. The high profile media reporting of city centre violence and the findings of community consultation exercises have often resulted in calls for police action to 'reclaim' urban centres at night (see, for example, Hobbs et al., 2003: 103-104). Where these conditions pertain, police objectors may urge licensing authorities and the courts to give credence to the view that applications should be denied, as further expansion of the high street will only exacerbate existing problems (see Chapter 8).

Police witnesses may be drawn from all ranks and have a wide range of different responsibilities within their organization. In many cases, dedicated police Licensing Officers will give evidence together with other officers who have night-time operational experience. I participated in one case in which a Chief Constable entered the witness box. Where an objection is led by the police, submissions may be organized in such a way that officers from various ranks emphasize different aspects of the case. A Police Constable, for example, might focus upon her experiences of operational policing and the processing of intoxicated arrestees, whilst an Inspector might present local crime data and CCTV footage, whilst outlining the impact of the NTE on broader policing strategy, resources and deployment.

Where the application is made by a high street chain, officers may present evidence from covert visits to other premises in the company's estate. Similarly, officers from other forces may be invited to offer their views on the suitability of the application. One force conducted a telephone survey to gather police opinion from around the country. However, as indicated in Chapter 4, police licensing is typically something of a Cinderella service and such concerted effort is rare.[88]

Sgt Bill Stevens is approaching retirement, having spent thirty of his fifty one years as a police officer. He started to deal with licensing enforcement issues as a PC twenty years ago and has been Partytown's Licensing Officer for the past eight years. Bill has a heavy

[88] In only four cases did I see police attempting to survey other forces or invite officers from other areas to share their experiences of a brand. Police witnesses may sometimes be reluctant to come forward to give evidence on behalf of other forces. There are two primary reasons for this. Firstly, they may see admitting that problems have been experienced as an organizational failure on their own part, to which they do not wish to draw attention. Secondly, they may wish to avoid prejudicing the working relationship they may have with the company.

workload. There are over five hundred licensed premises in the city centre and his responsibilities include issues as varied as criminal activity and money-laundering by licensees; the supervision of door staff; monitoring of operating standards / enforcement of the licensing laws; the processing of police input in new licence applications and reviews; and intelligence gathering with regard to intimidation, theft, fencing, illicit drug offences and alcohol-related violence. Bill and his secretary work alone from a cramped office in the central police station. He is contemplating retirement amid an avalanche of paperwork.

Despite the pressures, Bill enjoys his work. He performs a set of highly responsible and politicized tasks which belie his lowly rank. His experience and technical knowledge allows him to operate as an influential power broker in shaping governance of the night-time city. Although his stance is informed by general force priorities, he is a key advisor to senior officers in the shaping of licensing strategy. His day-to-day role involves the generation of compliance mostly through regular, personal and informal contact with licensees and venue managers. He represents the trade's "first port of call" for all police-related issues and exercises considerable discretion in how and when to apply "the rules." [89] Bill's main concern is to impose a set of police-defined minimum standards for the operation of licensed premises in the city and to apply them consistently. Bill knows that business people seek a "level playing field" when it comes to regulation and feel compelled to respond to situations they perceive to be commercially disadvantageous. He therefore wants to "keep the lid on" the number of late-licences and the number of new premises in certain areas as he knows existing operators will react en masse to any new threats to their competitiveness. Unbridled competition within the NTE does not meet with police conceptions of order.

[89] Unsurprisingly, companies will advise their managers to establish a good working relationship with their local licensing officer. The combination of low rank and relatively high levels of discretion and power, combined with an often 'sociable' relationship between the regulator and the regulated, creates ample opportunities for corruption and favouritism. For this reason, many forces choose to change their Licensing Officers on a regular basis.

As Bill's profile indicates, police Licensing Officer's represent the order maintenance interests of the State in every-night regulation of the business community.[90] In contested licensing matters, both sides may attempt to achieve a negotiated settlement (see Chapter 4). As in other spheres, the regulators attempt to "enforce through persuasion – they advise, educate, bargain, negotiate and reach compromise with the regulated" (Tombs, 2002: 119; Pearce and Tombs, 1998) applying both the carrot and the stick. [91]

Despite the police preference for informal and locally-constituted modes of regulation, development strategies of the bar chains remain outside the remit of venue managers and regional management. Such decisions are made by senior executives in far-flung head offices. Thus, although a company's local representatives may have nurtured strong links with the police, perhaps through participation in a vibrant Pub-watch scheme (see Hadfield et al., 2005a), hawks at head office may ultimately regard "business as war" (Punch, 1996: 228-9), destroying carefully nurtured goodwill in the ruthless and single-minded pursuit of a prized site.

The routine resource constraints placed upon police licensing departments are often matched by senior officers' wish to avoid becoming embroiled in costly legal battles. Decisions to object are not made lightly, and senior officers have to be prepared to justify the expense of confronting developers as a necessary cost of proactive policing. This situation usually occurs only after attempts to work 'in partnership' with business have floundered. The presence of police officers as objection witnesses in court is therefore salient in indicating the breakdown of routine non-litigious communication between the public and private sector.

[90] Although their actions are strongly constrained by guidance notes (DCMS, 2004b).

[91] As with objections, police enforcement activities can be restricted by the threat of litigation: "An Inspector has the power to close any licensed premises down for a limited period just on his say so. The first Inspector who does it of course runs the risk of getting his arse sued off, ha ha ha...we live in that sort of business I'm afraid" Tony, Licensing Officer, West Midlands.

Leisure Industry Competitors

Many objections are motivated by trade protectionism. Protectionists (acting either individually, or as a consortium) will typically seek to mirror the stance of other objectors in their expression of crime, disorder and nuisance concerns. In many cases, trade objectors choose not to make their own representations, preferring to act as advisors to parties such as local residents, and to underwrite some, if not all, of their legal costs (see Chapter 4). Trade backing can provide substantial assistance to an objector's cause, both financially and through the utilization of established links with specialist legal teams and elite advocates.

Local Authorities

During the research a number of local authorities, operating under the old PEL system, were seeking to impose 'saturation policies.' This involved applying a presumption against the granting of new licenses and variations to existing licenses which would result in increased capacities or extensions to late-night trading periods. In attempting to protect what they regarded to be the public interest, local authorities had to be willing and able to become embroiled in incessant, prolonged and robust litigation. The City of Westminster, the UK's largest licensing authority, had to deal with around fifty appeals against its decisions at any one time and incurred legal expenses in excess of £2million per annum. Although the Westminster experience was extreme, it was also instructive in indicating the leisure industry's willingness to challenge market interventions regardless of the considerable time, effort and expense involved. Understandably, the threat of court action encouraged many in local government to 'water down' their licensing policies or capitulate before cases reached court.

As the respondents to appeals under the old system, local authorities would call a range of in-house witnesses, notably, the Licensing Department Manager. Licensing Managers were responsible for defence of the Licensing Committee's decisions and general policy stance. Council witnesses might also include members of the licensing inspection and/or noise teams, and, in some cases, Environmental Health Officers. Other objectors such as

residents and police officers, together with experts, might also have been called to testify in support of the Committee's decision. Under the new system, licensing authorities are no longer permitted to act in this way and licenses may only be denied if and when a representation is received from an external source (see Chapter 1). Special Saturation Policies may be applied in cases where representations have been made; however each case must be judged on merit and the Guidance places onerous responsibilities on the licensing authority and objectors to provide evidence of a link between new openings and rises in crime, disorder and nuisance. The far-reaching implications of this legislative shift are considered in Chapter 10.

Applicants

Thirty nine year old Simon Bull is a tall man of athletic build. He has a tanned complexion and short greying hair. Immaculately groomed and exquisitely dressed in a navy blue suit, pale blue shirt and mauve silk tie, he swears the oath, gives his full name and address and confirms his title as Chief Executive of Chuck City Bars Plc. Simon is taken through his statement by counsel, Sir Timothy Davenport QC. He begins by listing his previous experience in a number of senior roles within the leisure industry including Chief Executive and Operations Director of a high street fast-food chain and Deputy Operations Director responsible for new development acquisitions at a pub company. Simon appears immediately to be a confident and impressive witness.

Throughout the history of licensing, regulatory authorities have taken a keen interest in the personal character of the vendor (Kolvin, 2005). The sale of drink in particular, has been seen as a responsible task, to be performed only by a 'fit and proper person.' Any problematic activities occurring in or around licensed premises have been regarded, to a large extent, as the responsibility of those whose names are displayed above the door. This focus upon individual responsibility is strengthened under the Act by the introduction of 'personal licences' for licensees (see Chapter 1).

At trial, a key aim of applicants is therefore to convince licensing committees, magistrates and the judiciary of their experience, professional competence and good

character. Yet, this focus upon the assessment of individuals held to be *personally* responsible for the day-to-day running of a business recedes in the context of the contemporary high street. Corporate chains do not present their prospective venue managers for judicial scrutiny. The applicants who testify at trial are invariably senior executives at the very pinnacle of their organization: Chairmen; Chief Executives; Managing Directors; Estates Managers and Operations Managers; persons whose place of work is a desk in head office.[92] This is not to say that applicants fail to describe the manner in which their premises are to be operated, indeed (as we shall see in Chapter 8), this theme lies at the very heart of their submissions. Evidence of this type is typically delivered by Operations Managers who are responsible for the general management of day-to-day operations across the company's estate. Yet, giving evidence under oath regarding the manner in which new premises are to be run is not a task entrusted to the person actually selected to actually perform this role. Benches are simply assured that the local manager will be experienced, fully trained and suitably qualified in accordance with company practice.

Possible reasons for the omission of more junior staff as application witnesses may be implied from the analysis of strategic interaction in Chapter 9. It may suffice to note here that in their courtroom performances, applicants will aim to convey impressions of honourable, benign, even philanthropic intent. Outside the witness box, more candid views may be expressed. In the course of a pre-trial meeting with police objectors, I heard one leisure executive comment that when his venue opened, people in the town in question would "get hurt." The police voiced concern about the aggressive tone of this statement. When later asked to explain his comment, the applicant told the court that he had simply meant that local competitors would experience a fall in profits. Such exchanges exposed a cultural dissonance between the public police as guardians of civil order and the "economic mind-frame" (Punch, 1996: 240) of a private sector elite.

[92] Of course, venue managers/licensees do appear as application witnesses in trials involving smaller, independent and locally-based businesses.

Supporters of the Application

Mike is Twenty Two and is taking a gap year after University. He has returned to his parents' house and is working in a call centre before he starts his 'proper job.' He used to enjoy working behind the bar at a late-night branded venue in his university city. All his friends in the rugby team would come down for cheap drinks and a laugh on the Wednesday 'Student Nights.' Nightlife in his home town is rather dull by comparison. He has heard that a new Chucker's Bar might be opening to replace the old cinema. He thinks the cinema is crap because it's too small and doesn't show a wide enough selection of films. Chucker's would be much better; just what the town needs.

In many trials, the applicant will present evidence which indicates local community support for their proposals. A popular approach is to commission market research, or, if the application pertains to longer hours, or increased capacity within existing premises, to conduct a survey of customer attitudes. These methods may be augmented by the use of lay people as witnesses, where, for example, the witness describes a visit to an existing venue within the chain which they go on to favourably differentiate with the venues available locally. Such demonstrations of support are important for three reasons: Firstly, to demonstrate that the development is supported by at least some, if not many local people; secondly, to offer, at least, an alternative perspective to that of the residential objector (at best, a view which appears more balanced, reasonable and representative); third, to negate the charge that the development is simply being imposed by an external force against the voice of popular local opinion.

Supporters of the application are typically drawn from the local residential population and/or from users of the night-time city. Their methods of selection are interestingly reactive in that their demographic profile will typically provide an indicator of some desirable feature of the proposal (eg., broad age range of customers):

Geraldine, a forty two year old mother of three, is a nurse. She likes to go dancing with her daughters and nieces and sometimes hires a mini bus to go clubbing twenty miles away in Drainville. There's loads of bars in Drainville and they usually end the night in

Marrakesh, a big nightclub that plays party records from the 70s and 80s. Geraldine prefers Marrakesh to the 'trendy' clubs in her home town of Mossfield as, even though most of the customers are much younger than her, she enjoys the music and atmosphere. She is delighted to hear that a Marrakesh might be opening next door to Wetherspoons in the old Kwik Save building on Mossfield High Street.

This witness selection process forms part of the delicate pre-trial crafting of cases and links directly to both the construction of arguments (see Chapter 8) and subsequent tactics of advocacy (see Chapter 9). This instrumentalism is never more apparent than in the commissioning of 'independent' opinion from professionals.

Expert Witnesses and Licensing Consultants

Linda Stevens (fifty four) is self-employed and runs a Market Research company from a PO Box address in the depths of rural Herefordshire. She has acted as a witness in licensing trials for over twenty years and her list of clients includes most of the major names in the high street. Her business operates on a national basis and she regularly finds herself in licensed premises, legal briefing meetings and courtrooms hundreds of miles from home. Linda provides evidence to the courts in the form of Market Research surveys. Her surveys measure issues such as customers' views of the premises; basic demographic information; modes of transport to and from an area; and customers' experiences of crime and disorder - both as victims and offenders. Of course, the questions explored in her surveys differ from case to case, but they always aim to inform the arguments put forward the lawyers who have commissioned her. Linda is an established team player who enjoys good ongoing relationships with her clients. Her reports are drafted in such a way as to complement the statements of other consultants typically selected by applicants, such as noise experts, surveyors, traffic consultants and former police officers.

Expert witnesses and consultants are ostensibly independent commentators commissioned to 'assist the court' in its understanding and weighing of opposing arguments and interpretations. Such witnesses are typically professionals who have up-to-

date or retrospective working knowledge, expertise and/or qualifications that can be applied to explication of the material circumstances of a case. They are typically chosen by counsel and commissioned by the parties' solicitors. Most will receive payment and their competent performance as a witness is part of the service they provide for their clients. To this extent, they can best be classified as a group of 'professional witnesses' and sub-divided into two, to some extent, amorphous groups: 'licensing consultants' and 'experts.'

Licensing consultants will usually draw upon their personal skills, experience and knowledge of relevant issues, rather than formal professional accreditation. Their ranks include ex-police officers (typically, Licensing Officers or those with operational experience of public order policing); private investigators and retired licensees. Experts, by comparison, are more likely to stake claims to legitimate speech which rest upon their qualifications. They tend to submit more specialized evidence in accordance with their areas of expertise and training. Expert witnesses are drawn from a wide range of professions including market research; acoustics; transport and land surveying and academia (academics may include criminologists; psychologists and statisticians).

For many licensing consultants and some experts, conducting investigations, writing reports and giving evidence in relation to licensing cases may be a full-time job. Parties will often employ the same counsel and group of professional witnesses in each case, presenting broadly similar evidence regardless of local peculiarity (see Chapter 9). For those selected by counsel to conduct regular work on behalf of corporate clients, the provision of consultancy services can, at least in the short-term, prove to be financially lucrative. Due to their financial muscle and usually superior legal resources, the trade have access to many more professional witnesses than do objectors.[93] Applicants regularly submit legal cost inventories of £50-100k, much of which is incurred in the procurement of expert opinion. During periods of rapid high street expansion, even those

[93] The commissioning of external opinion is also linked to regulatory shifts. For example, new instructions on the presentation of police evidence pertaining to nuisance and disorder contained in the Justices' Clerks' Society's *Good Practice Guide* (1999) (see Chapter 4) gave rise to increased police demand for expert witnesses.

experts brought in on an ad hoc, case-by-case basis may find themselves regular participants in licensing trials around the country.

As described in Chapter 2, the work of licensing consultants and expert witnesses will usually involve visiting both the location to which the application refers and other existing licensed premises controlled by the applicant. Consultants with a police, military or security industry background may be employed by companies to act as private investigators to observe, and in some instances, covertly film and record, activities in and around the premises of competitors. These tactics were particularly apparent in relation to the thorny issue of compliance with Section 77 of the 1964 Licensing Act (see Chapter 4) and would sometimes be used to support trade objections. Local authorities might similarly have used consultants' reports to inform and augment the work of their licensing inspection team.

It is typical for each party to present, largely conflicting, expert opinion. If one's opponent has commissioned an expert it usually felt necessary to commission counter-opinion in order to avoid being placed at a disadvantage before the court. If professional witnesses are evenly matched in their ability to present credible and persuasive evidence, the impact of such evidence in relation to each side's case can be effectively neutralized and balance is restored. The introduction of expert evidence follows a disease model – one side introduces a virus and the other side must seek an antidote. Ideally, the antidote will be powerful enough not only to stem progress of the disease, but also to provide effective immunity and actively promote health.

In many instances, experts are commissioned merely to provide what I shall refer to as 'negative' evidence. Negative evidence is evidence which is derived not from one's own primary investigations in relation to the material facts of the case, but rather from an analysis of secondary sources, chiefly witness statements and other documentation submitted by one's client's opponents.[94] In presenting wholly negative evidence, the role

[94] Here the use of time as a weapon is exposed. The preparation and submission of negative evidence depends entirely upon the willingness of one's opponent to disclose documentation in advance. In order to maintain procedural fairness, mutual disclosure timetables are therefore arranged as part of the pre-trial

of the expert witness is reduced to its most basic and functional form- the presentation of criticism, counter-argument and contradictory discourse. More credible and robust expert testimony will seek to combine deductive critique of an opponent's position with inductive analysis derived from one's own first-hand experience.

The Licensing Industry

From the perspective of many leisure industry players, licensing is regarded as little more than bureaucratic red tape. For corporate culture, the complexities of regulatory 'obstruction' are matched only by the irresistible economic drive for their circumvention (Punch, 1996; Slapper and Tombs, 1999). As in other spheres of regulatory practice, such as development planning (see Monbiot, 2000: 130-131), a whole legal and extra-legal industry has developed to assist applicants in the navigation of rough regulatory waters and the successful anchoring of prized development sites. This industry incorporates law firms; licensing consultancy companies; expert witnesses; and trade organizations promoting self-regulation. At the helm of the trans-regulatory enterprise one finds a small and elite band of specialist licensing barristers. In the following chapter, I shall consider the manner in which these 'generals' go to battle.

shaping of cases. The attempt to present late-evidence can give rise to legitimate complaint and submissions from opposing counsel regarding admissibility.

Chapter 8

Rose-Coloured Spectacles versus the Prophecies of Doom (The Shaping of Trial Discourse)

"...there has been, before the trial, a great deal of preliminary preparation, but the trial judge has not been concerned with it. Each party prepares his own case separately and, so far as he is permitted to do so, conceals his preparations from the other side" (Devlin, 1979: 56)

The Adversary System

An understanding of the role of the judge and/or the magistrates (henceforth referred to as 'the bench') and of counsel is prerequisite to the analysis of social interaction in the courtroom. Licensing trials are shaped by the basic assumptions and commitments of the adversarial system of adjudication as associated with the common law courts. Within this system, "the conduct of the litigation up to the point of trial is left entirely in the hands of the parties" with procedure "designed to concentrate the judicial function into one continuous hearing" (Egglestone, 1975: 429). At trial, evidence is presented and elicited by the parties, who question one another in turn. The role of the bench in fact-finding is essentially passive. Benches are "forbidden to call witnesses or to examine them otherwise than for the purpose of clarifying their evidence where it is unclear" (ibid.). Thus, the bench sits to "hear and determine the issues raised by the parties, not to conduct an investigation or examination on behalf of society at large" (Lord Denning, cited in Egglestone, ibid).

As Galligan, (1996: 244) notes, the peculiarity of this approach becomes clear one compares it with Continental legal systems, where "adjudication has a more inquisitorial character and where it is not uncommon for the judge to direct the collection of evidence and to stimulate lines of enquiry." The adversarial trial is, by contrast, a "war of words, a

battle between two opposing sides, each of which contends that its interpretation...is correct" (Danet and Bogoch, 1980: 36). As Devlin explains, the essential differences between the two systems are apparent from their names: the one is a trial of strength and the other is an inquiry" (1979:54).

In the adversarial system, the bench act as umpires or arbiters. At the opening of the trial, they are usually naïve as to the substance of the proceedings. Protocol requires that both parties disclose their evidence in advance of the hearing, but the bench are not obliged to read this material before the trial begins. Their first knowledge of a case will often be gleaned from the opening statements of counsel.

Partiality

"Above all, if anything was to be achieved, it was necessary to reject from the start any thought of possible guilt. There was no guilt...To this end one should... concentrate as far as possible on considerations which worked to one's own advantage" (Kafka, 1994: 99)

Legal scholars have identified fundamental deficiencies of the adversarial process (Danet and Bogoch, 1980; Ellison, 2001; Egglestone, 1975; Langbein, 2003), with flaws arising principally from the systematic encouragement of partisanship. The system is premised on the assumption that 'truth' is "best discovered by powerful statements on both sides of the question" (Lord Eldon, cited in Egglestone, 1975: 429). Each side is understood to be gathering, selecting, and presenting evidence for its own strategic purposes and it is assumed that if each party is allowed to "dig for the facts that help it...between them, they will bring all to light" (Devlin, 1979: 60). The bench must decide each case on the basis of this information alone. Clearly, this process contrasts sharply with inquisitorial modes of adjudication in which independent forensic investigators decide the case in the light of information they themselves have collected and analysed. As Devlin (1979: 54) puts it, the bench "do not pose questions and seek answers; they weigh such material as is put before them, but have no responsibility for seeing that it is complete."

Thus, it is the parties and their lawyers who define the parameters of the contest. They "introduce such evidence as they think fit and advance such legal propositions as seem appropriate to them" (Connolly, 1975: 439). The adversarial system encourages and rewards lawyers for "using all tactics at their disposal, even those which may seem ethically questionable, such as suppressing evidence, in order to win cases" (Danet and Bogoch, 1980: 36; see Freedman, 1975). With the bench placed "above the fray" (Langbein, 2003: 311), opportunities for the parties to frame and delimit the boundaries of debate are intrinsic to the system. Each battle is orchestrated and controlled by the parties; it is they who select the witnesses, strategically organize the evidence, and ask the questions. The licensing trial is thereby dominated by lawyers and, in particular, by counsel.

Counsel: Writers and Directors of the Script

Charles Britton QC (fifty four) was educated at Eton School and Oxford University and has spent much of his life surrounded by the cloisters and manicured lawns of England's traditional upper class institutions. His chambers overlook a tranquil square bordered by beautiful limestone buildings which shield it from the hustle and bustle of Central London. Charles specializes in licensing work and has become a celebrated advocate noted for his tact, guile and fearsome intellect. He represents applicants nationwide and has been instructed in a number of legally significant cases. Charles has a contractual relationship with Aggro Inns Plc. He has agreed to provide all Aggro's advocacy requirements in exchange for the assurance that he will not represent objectors or competitors in any litigation against the company. Fluent in French and German, in his leisure time Charles attends a Gentleman's Club in the West End and, as often as he can, indulges his passion for sailing. It is now eight years since Charles represented an objector; they can't afford his fees.

Those counsel who specialize in licensing are mostly middle-aged, upper-middle class, and almost invariably, male. They often share common educational backgrounds and interests in travel, leisure and the arts. These personal biographies inform and ease their interactions within the insular and exclusive social world of their profession (Pannick,

1992). Only a small number operate regularly on the national stage and their work is often associated with particular clients, especially the larger leisure chains.

In order to execute each case, counsel must decide what strategy to adopt; what pre-trial negotiations should take place; what sort of evidence should be presented; which consultants and experts should be commissioned; which lay witnesses should be approached and called. They must advise clients on the best course of action: the empirical and legal strengths of opposing arguments; the balancing of various factors in striking of 'out of court' deals; the progress of the case and its likelihood of success; the decision to appeal. Moreover, within the courtroom it is they who organize and submit the central argument; ask the questions; control the pace, order and detail of witness evidence (see Chapter 9). Precluded from giving evidence (although, in the cases I witnessed, they often did), counsel's task involves the extraction of evidence, both from their own, and their opponent's witnesses. Counsel aim to assist their client by forcefully presenting and defending what is ostensibly, 'his' or 'her' point of view. In so doing, as adversarial tradition would have it, they also assist the court in determining the relative plausibility and import of the evidence.

The Occupational Morality of Counsel

Advocates, by definition, are partial. In court, counsels' role is to *advocate* a cause, regardless of their own personal convictions, opinions or principles. Thus, although they may not truly believe what they are saying, they will act as though they do. As Pannick opines:

"The professional function of the advocate is, essentially, one of supreme, even sublime, indifference to much of what matters in life. He must advance one point of view, irrespective of its inadequacies. He must belittle other interests, whatever their merits...It is not for counsel appearing in court to express equivocation, to recognize ambiguity or to doubt instructions. His client is right and his opponent is wrong" (Pannick, 1992: 1-2).

Unlike witnesses, advocates are at liberty to change emphasis, make contradictory statements and to even develop and submit completely opposing arguments from one case to the next. Understanding 'both sides of the question' assists counsel in the construction of their case. In everyday social interaction, such inconsistency would be regarded as manipulative, amoral even. Yet, the norms of professional advocacy are quite different from those of lay communication. In donning the wig and gown, counsel effectively claim a legitimate exemption from the everyday interactional order and assume the mantle of licensed interrogator and denouncer (Garfinkel, 1956). The professional ethics of advocacy thereby permit and justify the separation of personal values from the effective execution of one's brief (see Du Cann, 1964: 34; 39-40; Rock, 1993: 39). The ultimate goal of a trial advocate is persuasion:

"The orator, as Socrates emphasized in his criticism of advocacy, does not teach juries and other bodies about right and wrong - he merely persuades them. He seeks to accomplish this task by using whatever arguments are likely to be effective in the tribunal before which he is appearing. He does not confine himself to those points which he thinks are correct. He does not pause to assess whether his submissions have academic respectability... the advocate will base his efforts on points which are persuasive, which '*look like* the truth, even if they do not correspond with it exactly'" (Pannick: 1992: 2, including a citation from Cicero, 1971)

Cases are won and lost through argumentation and in attempting to persuade the bench, "words are his tools...they must always be to hand" (Du Cann, 1964: 46). Counsel are usually highly articulate and sophisticated language users, well versed in the "art of proving by words multiplied for the purpose, that white is black, and black is white, according as they are paid" (Swift, 1726, cited in Pannick ibid: 128). The effective advocate is single-minded, determined and creative in pursuing his goal: "whatever the point to be argued, the resourceful counsel will be able to find some law to support him" (Pannick, ibid: 51). This persistence must be matched by "an ability to focus the attention of the judge (sic) on anything other than the central weaknesses of a client's case" (Pannick: ibid: 2).

As McBarnet (1981: 17) notes, "far from being 'the truth, the whole truth and nothing but the truth' a case is a biased construct, manipulating and editing the raw material" of the witnesses' accounts. The case is therefore "partial in both senses- partisan and incomplete" (ibid). The routine suppression of ambiguity and doubt and the practice of omitting any evidence that is considered 'unhelpful' to one's case is supported by the basic adversarial tenet that the 'truth' "best emerges from an orchestrated clash of opposing views" (Ellison, 2001: 51). If omission is regarded as a form of lie (Barnes, 1994), then, ironically, legal tradition thereby promotes the "claim that lies can be a mechanism for producing truth" (Bok, 1978: 161). At the same time, adversarial theory provides a ready stock of neutralizations (Sykes and Matza, 1957) for those advocates who are inclined to the opinion that their ends justify their means (see Langbein, 2003: 306-309).[95]

Preparing for Battle

The advocate's professional reputation is measured by trial success, the keys to which lie in successful mastery of their brief. Good preparation requires co-operation from a diligent instructing solicitor. Although sometimes acting as solicitor advocates, licensing solicitors more often play a supporting role to counsel. Solicitors will typically co-ordinate the preparation of cases: contacting and corresponding with their own side's witnesses and their opponent's lawyers; arranging case conferences; obtaining documents and ensuring that important deadlines are met. Expert witnesses may be asked to produce confidential briefing notes in relation to the witness statements of opponents. These are

[95] In his defence of advocacy, Pannick (1992) cites the promotion of 'free speech' as a higher duty of the advocate which overrides his or her obligation to the court and to the promotion of just outcomes. Although, Pannick candidly admits that acting in the interests of one's client "does not always promote the interests of society in general" (p7), from his perspective, the advocate is obligated to promote the cause of each client to the best of his ability, using all means at his disposal that fall within the law. This must include, "any client, no matter how unmeritorious the case, no matter how great a rascal the man may be...no matter how undeserving or unpopular his cause" (p90), or however unjust or unfair the result. Pannick's view of professional ethics rests upon the 'cab-rank rule' wherein the advocate must, wherever possible, work for any client who requests his or her services. This rule is seen as functional for society in that it ensures that everyone is offered the opportunity to have their case presented forcefully by a legal representative (p132-7). Yet, the rank can only function if every customer can afford the fare. Pannick's arguments depend entirely upon the generous provision of legal aid. In licensing, where objectors have no access to public funding, opportunities to commission specialist counsel are stratified in relation to power, wealth and influence. Langbein (2003: 102-103), in his historically-informed critique of the adversarial trial, refers to this as the "wealth effect."

used to assist counsel in the preparation of cross-examination. New arguments and sources of information may be sought such as the latest research or official crime statistics. Case law will be dissected and its legal implications interpreted. Professional witnesses may be sent on last-minute errands in order to clarify some contested fact. These are "backstage" activities in which only a trusted inner circle will participate (see Goffman, 1959: 116-136). As the hearing date approaches, counsel with produce a 'skeleton argument' document outlining the main legal and evidential bases of their submission. In court, solicitors will closely follow proceedings, often transcribing in shorthand notes. Following instructions from counsel, they may also co-ordinate the scheduling of witness evidence.

The communicative skills and professional knowledge of experienced advocates permit a fluidity and spontaneity of performance that can significantly enhance their presentation of each case. Yet, counsel cannot rely solely upon accomplished oratory. The often seemingly effortless and polished performances of the courtroom mask considerable preparation in relation not only to the form in which a case is presented, but also in relation to its *content*. As Ellison, (2001: 51) notes, "in examination-in-chief a barrister does not simply seek to elicit relevant factual information from a witness, but to promote a version of reality in antithesis to the account advanced by the other side."

The Framing of Arguments: Preparing Scripts

"Witnesses are the fodder of the courts" (Rock, 1993: 39) and counsel will take great care in gathering a team of witnesses – preferably, a tried and tested team - for each case. Both professional and lay witnesses have their uses: supporters of the application and residents provide authenticity (accounts of empirical matters and an ostensive link to the opinions and experiences of the local community); consultants provide detailed description; police officers and experts add analysis and an aura of legitimacy. Counsel work closely with witnesses, briefing each in advance and editing, shaping and approving their written submissions. Case construction in licensing requires techniques through which a large body of disparate information can be given coherent form. The strategic organization of evidence is of crucial importance to the presentation of a persuasive case. The key to

successful preparation is to develop a basic theory or storyline (see Bennett and Feldman, 1981) and "to identify themes that will provide the decision-maker with a framework for interpreting evidence at trial" (Ellison, 2001: 52). This involves the fashioning of what I shall refer to as 'evidential scripts.'

The role of counsel is to write and direct the script. Script writing is a strategic interpretive process through which evidence and arguments are 'framed' for the purposes of an adversarial trial. The script must have an internal coherence, even though, as an adversarial device, it "is not by definition about 'truth' or 'reality' or a quest for them, but about arguing a case" (McBarnet, 1981: 17). Thus, "the good advocate grasps at complex confused reality and constructs a simple, clear-cut account of it...an account edited with vested interests in mind" (ibid). The purpose of the script is to enhance the credibility of one's case, presenting a favourable picture that will gain the respect and sympathy of the bench. It will therefore seek to "propose and prefer' certain meanings over others" (Brown, 1991: 17). Script writing involves the art of manipulation and persuasion rather than the objective collection, analysis and reporting of facts. The advocate's concern is to tell a "good story," not necessarily a wholly truthful or accurate one (McBarnet, 1981: 19). Good stories are credible and believable, but not necessarily true. Counsel's opponent will construct a rival viewpoint, an "antithesis" (Rock, 1993: 33). The adversarial ethos ensures that it is largely left to the parties to reveal inconsistencies and errors in each others' scripts, if and when they can. Working from a prepared script allows counsel to control the case, applying her own instrumental order and logic to the evidence. Scripted evidence, "with its ambiguities and ifs and buts filtered out" is more malleable than the messy welter of social reality and therefore more suited to being moulding into an easily- digestible, consistent and persuasive case (see Bennett and Feldman, 1981; McBarnet, 1981: 22-3).

The clash of scripts involves the imposition of opposing frames of reference and meaning and serves to obliterate any semblance of the disinterested pursuit of knowledge. As the scripts are placed before a naïve audience, both sides are able to exaggerate aspects of social reality. The application script offers a version of reality as seen through 'rose-coloured spectacles.' According to this view, the application involves routine, benign and

non-controversial aspects of general business practice. Issues of controversy and dissent are screened out, scaled down or dissociated from the issues at hand. The applicant's proposals are thereby presented as non-threatening and almost entirely risk-free. By contrast, the objection script may be thought of as a 'prophecy of doom' in which the night-time high street is portrayed as at tipping point; teetering on the brink of anarchy. The applicant's proposed amelioration efforts are largely dismissed as inadequate in the face of the area's pre-existent and seemingly intractable problems. Licensed development is regarded as the generator of an incremental and largely irreversible process of decay.

These opposing frames infuse the evidential scripts and can be traced in the minutiae of courtroom interaction. Thus, when the interrogator asks a question he or she does so from a particular schema or frame of reference; "On the other hand, the person who answers a question also has his or her schema, or frame of reference, which may or may not match that of the questioner" (Shuy, 1993: 189). Importantly, the court, and counsel in particular, *expect* witnesses to favour one interpretation over the other, regardless of the content or weight of evidence, or the convincing performances of third parties (see Shuy, 1993: 188-193). To allude to the messy ambiguities of a situation is to *concede*: a point to the opposition.

In the following paragraphs, I will look in some detail at the content of opposing scripts. As we shall see, script writing relies upon a variety of stock arguments and concepts which may be moulded into a tried and tested 'pitch': a discursive formula of persuasion.

The Argument Pool

"The advocate had an inexhaustible supply of speeches like this. They were repeated at every visit" (Kafka, 1994: 97)

The following typology presents what I refer to as an 'argument pool' which can be defined as a set of pre-established, but fluid and constantly developing, practical discourses. The argument pool was developed from the thematic content analysis of field

notes, witness statements and other legal documents relating to oral and written evidence in over fifty licensing cases.

A case is scripted by selecting a set of inter-connected arguments from the pool. These arguments are then rehearsed in the testimonies of each witness in order to convey impressions of consistency, whilst 'hammering one's message home.' Although scripts are frameworks which afford structure to various forms of evidence, they are never adhered to rigidly in their practical application. Arguments drawn from the pool serve as flexibly applied and adaptive resources for legal practitioners, their clients and other witnesses. They address basic themes in licensing around which the particularities of each individual case can be creatively explored. As such, they offer practical weapons of choice for legal duelling.

'Fine Food and Agreeable Company': Defensive Arguments

Defensive arguments seek to counter or downplay objections.

1. Quality and Standards

Quality and standards arguments emphasise the credentials of the applicant and their intentions and proven abilities to deliver a high quality product. Arguments of this form were used in every one of the cases I encountered. This type of evidence has its origins in ancient and morally laden assessments of the 'fit and proper person.' As Brown notes with regard to criminal defendants, it is assumed that the bench will assess applicants against criteria similar to those of control theory (cf Hirschi, 1969), by looking for "signs of attachment, commitment, involvement and belief, their sociological assumptions resting on the premise that weak social bonds are the key causative factors in deviant behaviour" (Brown, 1991: 27).

Assessments of personal character remain important within the licensing court, despite being undercut by the commercial changes which have considerably diminished their practical import. As noted in Chapter 7, in the vast majority of trials I attended,

application witnesses were either head office-based chief executives of national or regional chains, or local independent owners and entrepreneurs. Seniority and court experience was used to the advantage of corporate applicants who were able to present polished and well practised performances. The absence of branch managers and other members of the lower ranks from the witness box allowed evidence to focus largely upon sterile accounts of corporate vision and strategy, rather than the rich messiness of local operational particularity. The quality and standards of a company's human resources were demonstrated via an emphasis on professionalism and the outlining of organisational rules and policies in relation to formal training and credentials; knowledge of the law; and adherence to acknowledged guidance and 'good practice.' Where questions relating to the personal attributes of frontline staff were introduced at the behest of the bench, these were simply met by assurances of experience, responsibility, trustworthiness and regular executive-level supervision.

Well prepared quality and standards arguments emphasized professionalism throughout the business plan and proposed methods of operation. Operational issues typically encompassed by this argument set included: a safe and controlled environment; high quality design and décor; comfortable furnishings; standardized and non-contentious entertainment and drugs policies; high-tech security hardware; professional and council/police approved door supervisors; proactive management techniques; quality food offer; premium drinks pricing and a strict admissions policy. This adversarial checklist was used to imply a cultural distancing from 'trouble' afforded by the targeting of older, more affluent, sophisticated, discerning and mature customers.[96] A popular approach was to portray one's business as part of a general shift up-market and away from a male-dominated, blue collar hard-drinking culture or the aggressive hedonism of

[96] Carefully scripted quality and standards arguments often meet with cynicism from professional objectors. As one of Hobbs et al.,'s (2003: 259) police informants opined: "Whenever you get an application they never say this pub is going to be for drunken young people who are just out of school, still chewing gum, while drinking from the neck of a bottle and talking about school; they never come to the court and say that. They always say 'well, this is a different pub now; it's a different image to all the others which you've granted. This is for the more mature, more discerning drinker and look at our wonderful menu'; and it's a load of bollocks basically and I know that it is at the time. I've been doing this long enough to know it's the same application done by a different solicitor every time, you know, same keywords, same trigger words and nothing changes."

the young Mass Volume Vertical Drinker (MVVD).[97] Quality and standards arguments infused applicants' expert witness statements, of which, the following extract is typical:

"The availability of three bars in the premises generally ensured that queuing for drinks was minimized and even at the maximum capacity, when people were being politely turned away at the door, it rarely took more than a few minutes to be served. Additional table service was also available. The atmosphere resembled very much that of a party for most of the evening and night. We also encountered groups of business men and women who had been attending training courses and awards ceremonies and had chosen the venue for their 'night out.' Many of these people were older than one normally encounters in city centre bars – some in their late-40s and 50s."

In presenting scripted quality and standards arguments, large companies operating a chain of premises appeared to derive some benefit from brand awareness and the ability to demonstrate previous examples of good practice. This issue illuminates interconnections between the homogenization on the night-time high street and the regulatory 'squeezing out' of independent operators, alternative venues and long- established, more community-based, forms of nightlife. The argument set is used to imply that the "law is largely respected by the regulated: and that where regulations are flouted, this tends to be on the part of marginal, less responsible, usually 'small,' companies" (Tombs, 2002: 115).[98]

Quality and Standards: Objector Counter Argument

The moot point with regard to 'quality and standards' is the *degree* to which well-managed premises can be said to contribute to problems of on-street crime and disorder. The main rebuttal to the argument involves an acknowledgement of the necessity of good management, paired with a denial of its sufficiency. In countering quality and standards

[97] These arguments appear to have informed the research of Chatterton and Holland's (2003) who write of the gentrification of nightlife. However, I found a sophisticated, gentrified atmosphere to be rarely, if ever, characteristic of operational practice on the high street (see Chapter 5).

[98] See also, Chatteron and Hollands, (2003); Nearne, (2003). As Chatterton (2002) notes, regulation is often applied differentially to the detriment of small scale local entrepreneurs who are regarded as unknown or risky entities. The 'risky' label can also be applied to alternative dance music-focused venues, which, despite generating generally lower levels of violence are sometimes associated with illegal drug use and professional criminal activity (see Chapter 5).

evidence, objectors might well concede that poorly managed premises are likely to account for a disproportionate amount of violence and disorder within their premises and also among their patrons once they have left. However, the objector might also point out that the issue is one of *proportionality*. Even well-run premises contribute to the problems arising in an area, albeit to a lesser degree. The expectation that a licensed premise will be well-run is thus regarded as a necessary, but not in itself sufficient, safeguard with regard to environmental impact. The clear implication of this is that even applications from operators with impeccable credentials who can be predicted to run their premises effectively, need to be considered carefully with due regard to their businesses' potential impact upon the proposed location.

The objector may assert that whilst it is of course preferable that licensed premises be well-run, even well-run premises can and do give rise to local problems, particularly when located in close proximity to each other. Strong management and responsible operating practices can help to prevent disorderly behaviour *within* premises, but can do relatively little to influence the behaviour of people as they move between venues or after they have left venues at the end of the night.

It may be added that the on-street environment in nightlife areas will often be quite different from that to be found within a well-run licensed premise: it is crowded, chaotic and frustrating. Within this context it is also important to note that people of any age or social background, if intoxicated and placed under adverse conditions on the streets late at night, can 'misbehave.' Their misdemeanours may not amount to acts of violence or criminal damage, but might well be expressed as noisy exuberance and emotional, argumentative or otherwise 'difficult' behaviour. Such problems can be exacerbated in an environment in which people are forced to compete for scarce resources such as late-night transport and fast-food.

This set of primary counter-arguments seeks to minimize, and to some degree side-step, the main thrust of quality and standards arguments. In the majority of cases, advocates regarded it as unnecessary or even counter-productive for objection witnesses to

challenge the reputation of the applicant. In other cases, quality and standards assertions were met 'head on.'

A number of branded chains are now inextricably linked to the night-time high street (see Chapter 4), which is, in turn, often justifiably associated with the problem of alcohol-related crime (see Chapters 1 and 6). Brand awareness can therefore be something of a double-edged sword. As well as being able to demonstrate examples of 'good practice,' national brands are also open to accusations of malpractice. When such evidence is presented, it tends to be taken very seriously by the court and especially by the applicant's lawyers who typically make stringent attempts to refute, deflect and diffuse any claims that are made. Such accusations might typically involve direct evidence of, for example, staff and/or customer violence; irresponsible drinks promotions; or drug-related activity. Due to the size of their estate, some national brands can face situations where a licence revocation, £1-a-pint-offer, or assault by door staff in Newquay might be brought to the attention of a licensing court in Newcastle.[99]

2. Differentiation

Differentiation arguments are grounded in the tradition of proving 'need' (see Chapter 4) wherein the justices might require applicants to demonstrate that they were offering something new or different to what was already available in an area. In combination with the quality and standards argument, difference from one's competitors might typically be emphasized in terms of pricing; customer care and service; premium food and/or entertainment offer; style of concept; ambience; management techniques, and instalment of new technology.

Difference is also expressed in terms of cultural distancing from a negatively construed mainstream. Advocates often appealed to class-based assumptions and prejudices in distinguishing their client's product from those of competitors whose customers were

[99] As noted in Chapter 7, competitors and police from other areas may pay close attention to trial proceedings as part of a broader process of covert intelligence gathering. The fruits of such investigation may sometimes be shared with other trade and non-trade objectors.

constituted as Other: the masses, an undiscerning, homogenous binge drinking 'rabble.' This approach was more sophisticated than it might initially appear. The acknowledgment and elicitation of popular concerns and generalized evidence of disorder, was combined - at the same stroke - with their dismissal as unconnected irrelevances, bearing little or no resemblance or connection to the individual circumstances of the case. In this way, applicants sought to demonstrate to the regulator that they were a distinctive (unique even) exception to the rule, blameless and 'low risk' operators whose business interests were culturally vaccinated from the problems generated by inferior competitors.

Differentiation arguments were sometimes used to attack as well as to defend. Competitors' operations might be directly 'named and shamed' for their lack of investment, irresponsibility or incompetence. Existing independent or alternative venues often proved 'easy meat' for corporate applicants who would feed upon stereotypically negative images of their customers. Such approaches often proved effective within a courtroom context in which decision makers typically had "little direct experience" or understanding "of the activities for which they are legislating" (Chatterton, 2002: 31) and the complex relationships between these activities and the various "styles, identities and divisions" to be found within the NTE (Op cit.: 43).

Differentiation: Objector Counter Argument

In responding to differentiation evidence, the objector is likely to argue that the distinctions described are largely cosmetic and relate to the exploitation of market niches rather than to any more radical form of functional diversification (see Hobbs et al., 2003: 260). The contents of the applicant's differentiation frame may be deconstructed and the decision maker urged not to be swayed by an evidential gloss obscuring more mundane realities. More specifically, the objector might cite evidence to suggest that activities within the proposed operation are likely to be primarily alcohol-focused, especially during later trading hours. Such observations may then be used to suggest that any problems generated would be qualitatively, if not quantitatively, similar to those of other premises. The objector would point out that even the affluent, respectable and otherwise

well-to-do can behave anti-socially when 'in drink,' and that even the most exclusive of new bars or nightclubs is likely to generate additional pedestrian and vehicular activity and associated noise in the early hours. It might be added that crime risks in the area are likely to be exacerbated, even if it is assumed that patrons are more likely to be the victims rather than the perpetrators.

3. Social Responsibility Arguments

Social responsibility arguments appeal to the concept of public-private partnership and a consensual, self-regulatory and compliance-oriented approach to regulation (see Ayers and Braithwaite, 1992).

As noted in Chapter 6, the expansion of high street leisure has been accompanied by cumulative and incremental problems generated, in part, by the sheer volume of activity on the streets. Within this context, corresponding shifts in regulatory opinion have occurred (see Chapter 1). Well-prepared applicants now recognise that it may no longer be prudent to rely solely upon tried and tested 'quality and standards' and 'differentiation' arguments. It has become increasingly necessary for them to go one step further in demonstrating active corporate citizenship in relation to issues such as residential quality of life, patron behaviour in public space and late-night transportation. The wise applicant will now outline her intentions to be a good neighbour and to operate in such a way as to minimize the risks of crime and disorder.

Social responsibility arguments aim to fulfil such criteria by firstly; identifying specific local problems such as noise, nuisance and disorder; and secondly, by positing creative solutions. The applicant is thereby located as standing in partnership with local communities and public sector agencies in their fight against crime and protection of the public interest. To this end, the 'responsible applicant' may swear allegiance to the self-regulatory activities of the local pub and club watch (see Hadfield et al, 2005a) and voluntarily commit herself to a range of undertakings and conditions which might be attached to the licence.

Alongside this ostensive commitment to partnership their will often be implied, or openly expressed, criticism of local agencies such as the police or council for failing to apply nationally propagated good practice. It may be suggested that local public sector agencies have stood back and 'done nothing' to improve matters. The applicant's counsel will attempt to turn received notions on their head by recasting her client as a philanthropic private sector benefactor bringing experience of national best practice to bear on a backward provincial outpost. 'Innovative solutions' that objectors 'may not have considered,' such as the private funding of additional police officers; installation of urinals which pop up from under the pavement at night; sponsorship of late-night bus services and the provision of a dedicated customer taxi service may be offered. The offering and taking of such bait does not necessarily require decision makers to have faith in the effectiveness of a 'technical fix.' The true potency of social responsibility arguments is revealed in their ability to impress sympathetic judges and magistrates and to sway doubters. In making such offers, the applicant provides the regulator with additional ammunition with which to respond to the submissions of objectors and justify their decision to grant. A shortage of crime control resources, for example, can no longer be used as an 'excuse' to deny the licence.[100] In sum, social responsibility arguments are used to make an application more robust and defensible. A package of creative measures is offered which aims to neutralize objections and impress the decision maker, whilst at the same time minimizing any impact upon long-term profitability.

Social Responsibility: Objector Counter Argument

There are two primary approaches which objectors may use to counter social responsibility arguments which I shall refer to as the particular and the general. In submitting particular counter-arguments, the objector will seek to dissect one or more of the specific solutions put forward by the operator. The validity of the proposals will be scrutinized in relation to their feasibility or likely effects. Such challenges are readily combined with objections of a more generalized nature. General objections might begin by asking the following question: at what stage in the development of a new licensed

[100] The contentious issue of 'paying off' police objections by offering to fund crime reduction initiatives was discussed in Chapter 4.

premise should social responsibility start? The objector would then point out that it cannot simply be the case that operators commit themselves to the responsibility ethic once their units are fully established and trading profitably. Unfortunately, by this stage it is often too late. The investment has been made and a new licensed premise has opened in an inappropriate location and has begun to cause local problems. Although the police have powers under the Act to take action against licensed premises which fail to conduct their business appropriately, in the context of a drinking circuit it is often extremely difficult to apportion the blame for incidents of street crime to any individual outlet. The police may be faced with an increased level of on-going problems and it is very difficult to put the 'genie back in the bottle,' as the successful revocation of licences is rare.

Evidence may be presented to indicate an overstretching of emergency, environmental and transport services (see Chapter 6). As Melbin (Op cit: 83-84) notes, night-time serves as a window of opportunity for service functions that allow organizations to overhaul and recuperate in readiness for daylight. One symptom of the temporal extension of the leisure economy is that it serves to erode this period of recess and rejuvenation. In the West End of London for example, London Underground have sought to resist calls for later rail services in order to reserve the hours they need for essential maintenance work. Similarly, Westminster City Council complains that in busy areas such as Soho, it can only conduct street cleaning operations in the brief period between dissolution of the night-time crowds and the start of the new working day.

Against the background of such evidence, the objector might ask how any harm reduction successes might be measured. Blame may be apportioned to the initial regulatory failures which permitted this now chronic set of problems to arise in the first place. However, adopting the 'polluter pays principle' in order to, for example, fund police over-time payments and arrest more people, may be cast as one of many attempts to 'shut the stable door once the horse has bolted.' The objector may highlight the need to strategically plan the development of nightlife areas in a responsible and holistic manner, thereby preventing the development of degraded urban environments into which additional policing resources must be poured.

The objector might further ask whether a responsible licensed operator genuinely working in partnership with the police, the local authority and the local community would chose an existing 'trouble spot' as the only location in which to invest? Were the local police consulted? Surely, if the police can provide good evidence of serious crime and disorder risks in a particular location, licensed operators should heed this and consider locating their new venture elsewhere? Does the very attempt to discredit police evidence in the courts and claim that one's business will have some form of miraculous calming effect belie the true extent of the applicant's commitment to corporate responsibility? The objector might conclude by arguing that it would be better for polluters not to pollute in the first place rather than to have their licence granted on the condition that they contribute to the clean up operation. As one local authority witness put it, "if the bath is overflowing, you turn off the tap."

Not in My Backyard? : Attack Arguments

Attack arguments seek to directly challenge the case of the objector.

4. Consumer Demand Arguments

The consumer demand argument appeals to conceptions of market freedom associated with political liberalism, involving "material choice and the right to spend one's money (if any) as one wishes" (Goodwin, 1992: 42). Accordingly, the expansion of the high street is said to be driven by greater levels of disposable income and the emergence of a 24-hour society (Kreitzman, 1999; Moore-Ede, 1993). Leisure consumers are said to have increasingly high expectations and to be demanding better standards of service. The applicant might state that their business forms part of an economically important and dynamic industry which is responding to the consumer demand for greater choice and longer trading hours. They might add that their decision to invest in this location simply reflects a wish to provide what their customers want and to exploit wholly legitimate opportunities for growth.

The consumer demand argument may be taken one step further, drawing from the doctrines of classical economic thought (Smith, [1776] 1979) and neo-liberal political economy (Friedman, 1982; Hayek, 1948). Hallmarks of the liberalist political and economic traditions include a concern with the limits of authority, and opposition to interventionism and paternalistic government (Goodwin, op cit). Accordingly, the licensing policies of municipal government may be framed as unwarranted and 'restrictive' intrusions into the workings of an essentially self-governing market. In the words of one trade consultant: "The number of licensed premises, like any business, is ultimately decided by the laws of supply and demand." A corollary of this argument is that attempts to 'turn off the tap' are not only unjust, but also misguided.

Consumer Demand: Objector Counter Argument

Objectors may respond by noting that the *laissez-faire* approach advocated by the applicant appears to have only two primary benefits: firstly, it maximizes freedom of action for the entrepreneur; and secondly, it increases choice for young consumers with relatively high levels of disposable income. The objector might add that these beneficiaries represent only a small minority of the local population, a minority whose needs are already more than adequately supplied. Similarly, the new consumption choices to be offered are qualitatively limited and remain dominated by the sale of alcohol.

More fundamentally, the applicant's interpretation of liberal political thought (if not laissez-faire economics) may be challenged by noting that J. S. Mill advocated the curtailment of freedoms in circumstances where their exercise threatened to harm the interests and freedoms of others (Mill, 1974). The objector may argue that de-regulation has generated these types of harm by contributing to the atrophy of democratic public space and residential quality of life (see Chapter 6). The objector might point specifically to exacerbated problems of crime and disorder; fear of crime; criminal damage; noise pollution; littering; fouling, and the overstretching of emergency and environmental services. Following Goodwin, the objector may note that the preservation of 'public goods' is often necessarily 'illiberal' in that it overrides many individuals' interests and has to be imposed by government (Op cit: 61).

5. Public Interest Argument

Public interest arguments extend the theme of benefits to the community beyond the issue of valued service and choice for consumers. The applicant may argue that they are willing to invest very large sums of money in the area and that this will benefit the local economy, provide new jobs, regenerate an old or disused building and help to improve the physical appearance of the built environment. It may be argued that, as shops, banks and building society offices close down (particularly in secondary retail areas) due to corporate rationalization, or in the face of competition from out-of-town retail parks, new uses have to be found for town/city centre sites. Leisure investment, it may be argued, offers the only viable opportunity for re-generation and will help bring the area back to life and reverse its economic decline. It may further be argued that the concept is not just for a night-time facility but one that will offer meals during the day which are popular with shoppers. More generally, the development will contribute to local taxation via its business rent and encourage visitors into the area who may also spend their money with surrounding businesses.

Public Interest: Objector Counter Argument

The objector may respond by clarifying that they have no objection to licensed development per se, and would raise no objection to the application were it to relate to an alternative location in another part of town. They would reiterate that the only reason for the objection is that the site chosen for development is on a pre-established drinking circuit in close proximity to many other licensed premises. The objector may voice their concern that the area is already a crime and disorder hot-spot and that the opening of a further licensed premise will only add to the problems already experienced in the area. The objector may dispute that the concept will add anything new to the area over and above what is already provided by the other licensed premises. The applicant may be asked to provide a breakdown of 'dry' and 'wet' sales in their existing outlets in order to ascertain the comparative importance of food and alcohol sales. The objector may dispute the assertion that no other use can be found for the building and may cite interest from

parties who have expressed an interest in re-developing the site for non-leisure use. The issue of public benefit may be contested in relation to the additional costs to the NHS, policing and environmental services budget generated by alcohol abuse and the NTE in general. The claim to provide new jobs may be questioned in the context of the closure of many pubs in rural locations, housing estates and the suburbs.

6. Darwinian Market Arguments

"As a general principle, to refuse cases of merit incurs the risk of reducing the quality of premises available to the public and has the effect of artificially keeping poor operators in business through lack of competition. It is submitted that the proper approach should be to weed out the poor operators and encourage good operators."

(Extract from the Skeleton Argument of an applicant in a London Magistrates' Court, 2003)

As described in relation to consumer demand, applicants will often appeal to the tenets of laissez-faire economics. The Darwinian market argument extends this theme by describing the market as an evolutionary system in which competition is generally healthy for the aggregate population, but less so for the weaker individuals. Within such a system it is right and proper that only the fittest of operators will survive (see Alchian, 1977). Licensing, like other forms of market intervention, has a tendency to lend artificial support to poor operators who would otherwise be "naturally weeded out by the competitive process" (Barry, 1991: 236). From this perspective, improvements can only be driven by investment, rendering the denial of a licence necessarily anti-progressive. In the words of one judge who found this argument persuasive, "the situation will not be improved by refusing to allow a new entrant of the quality of this applicant into the market – solutions to the area's problems lie elsewhere." [101] The reference to 'solutions lying elsewhere' relates to the corollary argument that licensing and enforcement

[101] In Lee-Jones v Chester Licensing JJ Licensing Review, 28.

activities should be focused upon the 'bad' operators who are contributing to existing problems, rather than upon denying new licences to 'good' operators.

Darwinian market arguments rest on two assumptions; firstly, that the operating standards of licensed premises are *the* key predictors of crime and disorder; and secondly, that the introduction of new, well-run licensed premises will assist *crime reduction* by incrementally forcing competitors to either improve their own standards, lose custom, or (it is implied) eventually close down. Inevitably, Darwinian market arguments can only be used in conjunction with 'quality and standards' and 'differentiation' arguments. In order to argue that the good will drive out the bad, the applicant must first establish that they are one of the good. Once quality and standards and differentiation evidence has been submitted, the applicant is then able to argue that to grant the licence would be to improve standards in the area, whilst to deny the licence would be to "ossify the status quo" and allow it to remain a youth and booze ghetto. In its strongest form, Darwinian market testimony submits that the denial of new licences is a "crude and simplistic response" that is likely to be "counter- productive," "perverse" even.

The Darwinian Market: Objector Counter Argument

The objector may respond by saying that there are in fact very few poorly operated premises in the area and that whenever problems do arise these are acted upon by the appropriate agency. The objector may produce statistics to show that the majority of disorder and nuisance occurs outside licensed premises and on the streets rather than within licensed premises themselves. It may be stated that the key factors contributing to such problems appear to emanate from activity levels in public space associated with high density nightlife, issues which are largely beyond the control of individual licensees or operators. It may be further asserted that the majority of surrounding premises are already operated by well known and respected national operators, many of whom presented similar arguments when seeking to obtain their own licenses. Statistics may be presented to show that crime and disorder in the area increased, or at least failed to decrease, following the opening of such premises. The objector may question why, if increased

competition really does drive up standards, problems in the area have not gradually subsided with each new opening.

The objector may go on to note that the evolutionary model rests upon assumptions of scarcity in relation to a finite consumer base. It is this scarcity which breeds competition. However, when facing a new predator, existing operators will not simply curl up and die: they will fight for survival. Fighting for one's commercial life might involve reducing standards rather than improving them, alcohol price wars and the dropping of admission standards being obvious examples. Furthermore, is it true that the market has reached its full potential? Can the applicant provide examples of business failure in the area (or indeed examples of successful licence revocation)? What if the situation is actually one of plenty rather than scarcity? What if more consumers are drawn into the area following the opening of the premises due to its enhanced reputation as a nightlife destination? In such circumstances, surely the weaker operators would survive and face little pressure to improve their offer.

7. Public Safety Arguments

Public safety arguments present a further corollary and extension of the quality and standards, social responsibility and Darwinian market themes. At their core, the arguments suggest that if licensed premises are well managed and people have a good experience within them, then this will have a very direct impact on what happens on the streets. Good operators thereby directly improve the situation on the streets. In the somewhat humorous argot of one 'expert witness,' the area will benefit from "good behaviour by contagion": the 'well behaved' and 'good natured' customers of well-run licensed premises will go out onto the streets and 'spread the good word.' The argument was more technically expressed in one witness statement as follows:

"It is quite clear that the manner in which licensed premises are operated affects the mood and behaviour of the customers, particularly after alcohol has been consumed. The well-established effect of alcohol (ethanol) is to make people more susceptible to cues in their immediate social environment. Where that environment is well controlled and free from

aggression and conflict, the effect is one of increased sociability and sense of well-being. Conversely, where the environment contains frustration and cues for disorderly conduct, the consumption of alcohol is likely to lead to much more negative behaviours. These effects can be relatively long-lasting and certainly long enough to influence behaviour amongst customers on the streets after they have left the premises."

In the case of applications for late-licenses, public safety arguments can be used to argue in favour of physical containment. The provision of additional capacity within well-run licensed premises over a longer time period is argued to be preferable to having consumers wandering the streets 'unsupervised' and in search of further entertainment.

Public Safety: Objector Counter Arguments

The objector may seek to verify claims that the positive effects of drinking within well-managed licensed premises can last long enough to influence the behaviour of customers on the streets after they have left the premises. Two points emerge from this: firstly, how might the applicants explain the effects of the popular customer pastime of 'circuit drinking' wherein customers visit a range of, sometimes quite different, licensed premises within the same night. What are the likely effects of this mixing of environmental cues or 'messages'? More fundamentally, what is the nature of the 'message' itself, what powerful social, cultural or psychological forces are at work to influence customers so profoundly? The applicants may be asked to provide clarification of the processes they see at work here. Can research literature be cited in support of such assertions?

Secondly, the objector may point out that the on-street environment in nightlife areas will often be quite different to that found within well-run licensed premises: it may be crowded, disorderly and frustrating. Noting the point that people who have been drinking are more susceptible to cues in their *immediate social environment*, the objector may ask to be told exactly how and why drinking in a 'nice' environment until 2am, for example, will render one less likely to be involved in an incident outside a take-away or in a taxi queue at 3am.

In further response to the above and to the corresponding 'patron containment' argument, the objector may reiterate the point regarding proportionality that was also conceded in relation to 'quality and standards' arguments. Clearly some premises will contribute to local problems more than others. The objector may argue that premises which trade into the early hours of the morning are likely to have a more deleterious impact than those which close earlier. Their customers are likely to have consumed more alcohol and are likely to leave at a time when a greater proportion of residents are attempting to sleep.

8. The 'Mature Circuit' Argument

A number of applicants made reference to the 'maturity' of the local high street in relation to the "relative stability of the area's population." The concept of the 'mature circuit' is used to argue that additional licensed premises will not attract substantial numbers of additional visitors. It is said that patrons will be drawn from the existing customer base and business generated at the expense of inferior competitors. A process is described in which, over time, the number of visitors to a nightlife area reaches a plateau and no further increases in visitor numbers are experienced.

Mature Circuit: Objector Counter Arguments

Objectors may respond to mature circuit arguments in two ways, one of which involves an acceptance of the basic 'market saturation' premise and another which seeks to reject such conceptions. Using the former approach, the objector may point out that the concept of maturity implies acceptance of the status quo. If an area can be shown to currently attract a predominately seventeen – twenty five year old clientele and the applicant is to also to draw from this customer base, then what does the application have to offer over and above what is currently available? Mature circuit arguments therefore undercut differentiation arguments; the applicants, by their own admission, will do little to generate a more inclusive social mix.

In the second type of response, the objector rejects the concept of maturity altogether referring to a contradictory 'honey pot' effect. It may be argued that nightlife consumers

are similar to day-time ones to the extent that they are attracted 'like bees to the honey' to clusters of outlets which are conveniently located to fulfil their entertainment needs, whilst also offering the exciting ambience of a social gathering. Part of the appeal of nightlife areas is that one can always find 'lots of things going on' and many entertainment venues to 'see and be seen in.' One of the most important features of concentrations of entertainment venues is that they increase customer choice and tend to promote an exciting and vibrant street-life as customers are encouraged to move between premises and sample the various styles of entertainment on offer. Nightlife clusters thrive on innovation in terms of design, branding and operating style and new and attractive developments will often act as a catalyst, drawing in larger numbers of visitors.

9. The Destination Venue Argument

As noted in Chapters 4 and 6, drinking circuits spell choice, activity and excitement for consumers and profitability for the trade, yet for the police and other objectors the term 'circuit' may be loaded with negative connotations associated with binge drinking and disorder. These understandings may be challenged by the applicant in two ways: firstly, it is necessary to contest objector definitions of a circuit; and secondly, to claim that it is possible to be located within a circuit whilst not being *part of* a circuit. For example, when challenged regarding his company's stated preference for developing sites on high street circuits, the Estates Manager of one PLC argued that the term circuit referred merely to "a central location, at the heart of things with good transport links." Secondly, he claimed that his operations were the perfect antidote to established drinking circuits in that they were 'destination venues' for a whole evening's entertainment and therefore acted as a 'circuit breaker': a venue which, due to the high quality of its food, drink and entertainment offer, literally stopped circulating revellers in their tracks and encouraged them to remain within one licensed premise for the rest of the night.

Used in combination with differentiation arguments, the destination venue argument seeks to identify the applicant's brand as in some way culturally, if not spatially, distinct from the drinking circuit. As premises used by customers for a full night's entertainment, destination venues are said to stand out from the pack and can apply strict admissions

policies to defend themselves against pollution from any unruly elements inhabiting the circuit.

Destination Venues: Objector Counter Argument

Objector responses to destination venue arguments are illustrated in the following case notes:

As part of his company's application for a new liquor licence, the Estates Manager for *Lonesome Taverns Plc* described existing *Lonesome Cafés* as 'destination venues' in which customers generally chose to remain for the entire evening. As such, his venues did not "typically form part of any established drinking circuit." This statement conflicted with information to be found on the company's own website. On a web page entitled 'site requirements' which provided details of the company's new expansion and development plans, visitors were invited to submit details of any potential sites suitable for re-development as a *Lonesome Café*. These details included a stated requirement that all new development sites for the brand "must be on High Street circuits, no leisure centres or retail centres unless city centre." Why, counsel for the police was prompted to ask, if the concept functioned as a 'destination for a full evening's entertainment,' did company policy dictate that new premises would only be built on existing High Street drinking circuits. Surely, a 'destination venue' need not be part of any circuit?

Objectors may pose further questions: From where are customers to be drawn, if not from the existing circuit? If the applicant wishes to attract business from other premises it will be necessary to adapt to local consumer preferences which may include the desire to visit several premises. If new customers are to be drawn from outside the circuit will this not add to the cumulative stress being placed upon the area? Might more mature patrons be dissuaded by the venue's location within a youth-dominated crime and disorder hot-spot? In sum, why not develop the premises in another area of the city?

10. Functional Segregation Arguments

Even though the role of outlet density as a contributory factor in the generation of alcohol-related crime and disorder is increasingly acknowledged (see Chapter 1), views differ as to the appropriate policy responses. Functional segregation arguments assert that the geographical spread of outlets should be restricted. The applicant may raise the issue of a potential displacement of crime, disorder and nuisance to other areas and argue in favour of containment within easily identifiable 'fuse' areas (see Barr and Pease, 1992: 207). It may be accepted that these 'leisure zones' will be avoided by the majority community at night, but asserted that their spatial and temporal parameters at least allow for intensive and targeted policing.[102] Functional segregation arguments have received some support from researchers and police officers. Bromley et al. (2000) argue that regulators should encourage the spatial segregation of youth-oriented drinking circuits in order to facilitate the development of alternative nightlife attractions in other areas of the city. The suggestion is that, as such areas may already have a somewhat tarnished image corralling new developments within them might serve to reduce public anxieties and encourage a wider range of people to participate in night-time activities in other parts of town.

Functional Segregation: Objector Counter Arguments

Objectors will typically reject functional segregation noting the echoes of modernist planning and failing programmes of urban zoning. They may go on to recite the tenets of the mixed-use paradigm, emphasizing such assumed benefits of functional diversity as natural surveillance and territoriality (see Chapter 6). Objectors may highlight the importance of a sustainable residential community within the city centre and note the processes through which crime and disorder can be generated by an over-concentration of licensed premises (see Hadfield and contributors, 2005b). Displacement concerns may be rejected by noting that other areas of the city combine fewer crime generating and attracting features with a greater presence of crime 'detractors' (such as residents). The

[102] In its strongest form, this argument has been used to justify calls for the formal designation of urban public space into 'wild' and 'tame zones.' In tame zones, a zero tolerance approach to minor public infractions is applied, whereas in wild zones law enforcement is relaxed (see Ellickson, 1996).

objector may assert that the possibilities of chronic displacement to such areas are therefore remote (Hobbs et al., 2003; Maguire and Nettleton, 2003). The objector may argue that by contrast, enforced containment and concentration will serve to exacerbate existing problems, with harmful consequences for the consumer and for the image of the area in question.

11. Denial of Impact Argument

In common with functional segregation arguments, denial of impact arguments acknowledge the legitimacy of concepts such as saturation and environmental stress, however, unlike the former, they go on to dismiss such concerns as unconnected to the material facts of the case. Denial of impact arguments aim to meet core objector arguments head-on by challenging their empirical basis. Such challenges usually involve the commissioning of expert witnesses more usually employed in relation to planning tribunals such as planning and transport surveyors, licensing surveyors and noise specialists. Such witnesses may give evidence in relation to actual and predicted pedestrian and traffic flows, late-night transport provision, noise levels, and the land use profile of the area, particularly in relation to the location of residential accommodation and existing licensed premises. Such evidence is used to argue that objectors are simply mistaken in their claim that the area is under stress and to deny that the applicant's proposed development will have any deleterious effects upon residential quality of life or the safety of visitors.

Denial of Impact: Objector Counter Arguments

In responding to denial of impact arguments, objectors must forensically examine and challenge the evidence of the applicant's expert witnesses. They will also need to present strong counter-evidence which lends support and justification to the objection. This may be presented by police officers or local authority personnel, together with the objector's 'own' expert witnesses (see Chapter 7).

More generally, objectors may respond by arguing that environmental impacts relate to issues of quality as well as quantity. For example, although night buses or taxis are 'available,' people's actual experiences of using such services may be particularly negative. Objector witnesses may be able to provide first-hand accounts which provide insight into the general 'feel' of an area late at night. Such accounts might also address specific concerns such as the fear of crime, overcrowding, frustration and the potential flashpoint effect at transport termini or on night buses, the activities of illegal minicab drivers and the risk of street robbery, assault or sexual attack. Similarly in relation to noise and nuisance, pedestrian counting exercises may be construed as sterile in relation to the reasonable anticipation that many of those on the streets late at night are likely to be both intoxicated and demonstrative and to have had their hearing desensitized by loud music. The objector might argue that in such circumstances, even small numbers of people may create menace and nuisance.

12. Dismissal of Legitimacy Arguments

Dismissal of legitimacy arguments share similarities with the denial of impact approach in that they attempt to portray the objector as in some way mistaken. However, dismissals of legitimacy go further than this by implying that the objector's views are atypical, or representative of an intolerant minority. Residential objectors are the primary target of such challenges. The applicant may argue that town and city centres have always been noisy, vibrant and risky places and areas of night-time entertainment. The residents of central areas therefore surely knew what to expect when they chose to live there (see Chapter 6). Furthermore, it may be argued that this 'vibrancy' is part of the attraction of city centre living and its side effects are an inevitable price of convenience. The applicant may go on to note that the desirable quality of life in such areas is reflected by general trends such as the growing residential population and rises in rental values and property prices.

As noted, residential objectors may also be challenged in relation to whether or not their views are representative of the local population. The following case notes are illustrative:

As part of a gruelling seven-day hearing in the Crown Court, an objector witness, the Chairman of the local Civic Trust, was asked to provide the court with information relating to the personal profile of the members of his organization. This information was then compared with statistics from the electoral register which showed that membership of the Trust was highly skewed in favour of older residents. The local population, it was argued, had a high proportion of young people whose views were not represented by the 'conservative' stance of the Trust. The applicants then called their own witness, a twenty two year old local resident, who said that he and his friends liked the brand and even travelled to other cities in order to experience it. The witness added that, in his opinion, the concept was different from, and much better than, any of the town's existing premises.

Applicants may seek to support dismissal of legitimacy arguments by commissioning market research (see Chapter 7). A witness from the market research organization may submit evidence to show that the local people they surveyed had a very positive attitude to the opening of the premises, did not suffer unacceptable noise from clubs and bars, and had rarely, if ever, been the victims of crime.

Applicants might also wish to deny the legitimacy of the local police or council's stance on licensing issues. For example, the placing of restrictions on the number of licenses in an area may be construed as a "crude" and "simplistic" approach, out of step with Government policy and informed opinion (see below). As detailed in relation to social responsibility arguments, 'more effective' solutions may be posited.

Dismissal of Legitimacy: Objector Counter Arguments

In response to the attempts to dismiss the legitimacy of their stance, objectors may raise a number of issues. Residents may admit that they enjoy urban life and do not expect, or want, their local area to be as quiet and peaceful as a suburban street or rural village. They may however recount a sorry story of personal experiences during the night-time hours (see Chapter 6). Residents may claim that the problems have increased in recent years following the opening of more and more licensed premises. They may urge that a

line now has to be drawn in order to prevent further deterioration of their local environment.

The objector may stress that such problems are destroying community life in the area. Some residents occupy homes or streets in which their families have lived for generations and should not be forced to leave; or there may be poorer residents in social housing who have no option but to stay. The re-population of central urban areas is led by childless upwardly mobile young professionals and students who are only planning to stay for a relatively short time. Whilst these groups may be consumers of nightlife, residual populations also need to be taken into account, including families with young children and the elderly. Many residents may be from ethnic minorities, who for cultural or religious reasons have no wish to consume alcohol or partake in pub and club culture. The objector may argue that, in truth, it is the applicant's customers who are in the minority; is it right that their leisure consumption preferences such take precedence over such important quality of life concerns for the wider community?

Police and local authority objectors may respond to dismissal of legitimacy arguments by noting that they are merely fulfilling their statutory duties to protect the public interest. Where applicable, both agencies may assert that their stance is informed by robust data collection and community consultation, developed as part of a broader public policy agenda encompassing local crime and disorder strategies and planning policies etc.

13. Witness Integrity Arguments

Attacking the integrity of witnesses in order to uncover evidence of perjury, bias, omission, intolerance, aggression, prejudice and vested interest is a classic method of advocacy. In advance of the trial, an opponent's witness statements will be carefully dissected in the hope of identifying integrity issues. In the case of experts, confidential briefing notes may be sought from persons who have the requisite knowledge to provide negative commentary (see Chapter 7). Challenges to integrity are also made instantaneously in response to verbal replies during cross-examination. In raising such issues, I stray into the realm of courtroom interaction to be explored in Chapter 9.

Witness integrity arguments are a recurrent theme of adversarial adjudication and are therefore included in the pool as an argument form, even though their content cannot be specified.

Witness Integrity: Objector Counter Arguments

There are two primary responses to witness integrity arguments: defence and counter-attack. Unlike many more predictable themes within the argument pool, witness integrity arguments will often involve elements of surprise and the 'ambushing' of witnesses during cross-examination. As discussed in Chapter 9, the adequacy of a response will depend almost entirely upon the ability of individual witnesses to defend themselves and the professional skills of counsel in formulating re-examination questions which provide the witness with opportunities for repair. As we shall see, skilled and confident witnesses can turn their defences against hostile cross-examination into further opportunities for attack, thereby 'scoring points' for their own team.

14. Reapportionment of Blame Arguments

Reapportionment of blame arguments seek to transfer liability for an area's problems onto agencies such as the police and local authorities who are said to have failed in their public duty to provide adequate services. Blame may be apportioned to inefficiency or lack of vision in relation to policing methods; licensing inspection, enforcement and environmental services; and the inadequacies of late-night transport, public toilet provision, street lighting and CCTV etc. The licensing authority may be accused of creating the problem itself though *laissez faire* policies of the past when licences were awarded to 'irresponsible operators.' Similarly, problems may be apportioned to unlicensed minicabs, street drinkers, fast-food outlets, off-licences and street vendors, all of whom, it may be argued, are allowed to 'pollute' the area with impunity.

Further blame may be apportioned to the irresponsibility of individual consumers and a hard core of persistent binge drinking offenders, in particular (see Chapter 6). These people, so the argument goes, would not gain, or even seek, admission to the applicant's

premises. They are the customers of inferior premises and off-licences and it is the responsibility of the police to find and arrest them. Whilst these 'flawed consumers' should receive punishment, the law-abiding majority of the 'going out population' should be allowed to enjoy the urban leisure experience as they see fit.

Reapportionment of Blame: Objector Counter Arguments

The objector may respond by pointing to inconsistencies in the applicant's argument. Although tight regulation and enforcement is rejected as unwarranted and unnecessarily draconian in relation to the application, such approaches are lauded when applied to other stakeholders. The objector may argue that although the applicants highlight the need to improve public services and clamp down on informal economic activity, they fail to acknowledge that demand for such services is generated by the patrons of licensed premises. Most people who come into the city centre at night do not do so with the primary intention of buying hot dogs and plastic roses, or for the frisson of riding home in an unlicensed minicab. For the vast majority of visitors, these activities are ancillary to the main purpose of their trip: to visit licensed premises. The objector may go on to note that many of these ancillary activities do not involve the sale of intoxicating substances such as alcohol. When apportioning blame, are we to ignore the contribution of those businesses who draw consumers into the high street and who derive most financial benefit from it?

15. Attribution Arguments

The adversarial system's insatiable hunger for sources of ambiguity and doubt ensures that the forensic dissection of statistical evidence emerges as a salient feature of the licensing trial. The issue typically arises in relation to 'saturation' policies grounded upon the notion of a cumulative and incremental deterioration of the public space environment (see Chapter 4). In presenting attribution arguments, the applicant may seek to question the evidence underpinning such policies (see Harrington and Halstead, 2004). The objector may be asked to demonstrate that the amount of pedestrian and vehicular activity has increased in recent years, or to prove that offenders and victims of crime are

customers of licensed premises, rather than street drinkers or young people simply hanging around. In the words of one expert witness:

"In order to support their stance, the Council would need to present two types of empirical evidence: a) that there has been an increase in the number of pedestrians in the area and this is directly attributable to increases in the total capacity of late-night entertainment premises; b) that the persons committing anti-social acts and crimes are patrons of such premises."

A further attribution approach is to question the validity of police-generated crime statistics. The applicant may call academic witnesses such as criminologists and statisticians. Such witnesses typically provide 'negative' commentary which points to various ways in which the quantitative evidence submitted by police objectors might be said to be inaccurate and over-estimated. Typically, high levels or sharp increases in crime are argued to be mere artefacts of the recording process rather than valid reflections of 'real' trends. Applicants may also alight upon further complexities which surround the definition and measurement of 'alcohol-related' crime. In so doing, they may be assisted by industry-funded research, especially that emanating from lobby organization The Portman Group (see Hadfield, 2003).[103]

Attribution: Objector Counter Arguments

The issues arising in relation to attribution are complex and regulatory agencies cannot afford to be complacent with regard to issues of quantification (Elvins and Hadfield,

[103] As noted in Chapter 4, Portman Group-funded research by the consultant Peter Marsh formed virtually the sole empirical referent for the Government's stance on extended hours. Marsh went on to conduct further work for the Portman Group in relation to the measurement of alcohol-related crime and disorder. His report on this matter concluded that: "We have been unable to discover many extant procedures that can provide anything more than rough indications of the level and pattern of alcohol-related violence and disorder in even the most localized contexts. All existing procedures, in our view, have such serious conceptual and methodological weaknesses that they are unable to provide truly objective and reliable data" (Marsh et al, 2002: 13, see BBC, 2002; Rogan, 2002). I have questioned the validity of this statement in some detail elsewhere (Hadfield, 2003). For present purposes, it will suffice to note the report's potential contribution to the argument pool and to mention that its lead author has been one of the busiest expert witnesses in Britain! For interesting comparisons with the industry nurturance of compliant academics and convenient 'scientific' findings in other economic spheres, see Harding (1992); Pearce and Tombs (1997; 1998); Rabin (2001) and Tombs (2002).

2003; Hadfield and Elvins, 2003). Attribution arguments require specific technical responses which will differ from case to case depending upon the type of challenge that is made. Notwithstanding, the classic 'dark figure' of crime is likely to loom large. The objector may argue that, in the context of the NTE, even the most robust and comprehensive data base is likely to produce significant under-estimates of actually occurring crime, disorder and nuisance (Lister et al, 2000; Maguire and Nettleton, 2003; Tierney and Hobbs, 2003).

16. Extended Hours Arguments

Extended hours arguments essentially rehearse the Government line on the issue as discussed in Chapter 4. When applying for a late-licence, applicants will typically begin by espousing the 'official position' which holds that statutory permitted hours have been partly, or even mostly, responsible for the high street's ills. The applicant may present the benefits of extended hours as a received wisdom, supported by influential police opinion, and forming a cornerstone and foundational principle of the Act.

Extended Hours: Objector Counter Arguments

Again, as discussed in Chapter 4, the objector may point out that the Government's position appears to have little empirical support. The objector may go further in presenting contradictory evidence from the international research literature (see Babor et al, 2003; Room, 2004) and from UK cities which have adopted a de-regulatory stance. The objector may also submit locally-derived evidence. If the local area already has an increasing number of late-licensed premises, statistics may be available to indicate: a) that crime and disorder has increased/remained constant following the opening of such premises, b) that a temporal shift has occurred, with a greater proportion of offences occurring in the early hours of the morning (see Isle of Man Constabulary, 2002; Metropolitan Police, 2004).

Information Wars: Policing the Boundaries of Contestation

"To escape the impact of a well-functioning system of propaganda that bars dissent and unwanted fact while fostering lively debate within the permitted bounds is remarkably difficult" (Chomsky, 1989: 67)

As we saw in Chapter 6, the Government/trade coalition places great emphasis upon personal responsibility (of both the consumer and supplier of alcohol), encourages voluntary self–regulation by industry and places great faith in campaigns of health education. As Room (2004) notes, these are the very approaches which, despite being shown by the international evaluation literature to be *least* effective in reducing alcohol-related problems, are now enshrined as key planks of the Government's *Alcohol Harm Reduction Strategy for England* (Strategy Unit, 2004).

The disjuncture between evidence and policy is indicative of an attempt by Central Government to control the agenda of public debate on alcohol. This bounding of debate has resulted in an inequality of access to information which compromises the case of objectors and restrains their ability to utilize the argument pool. Many of the objector arguments are out of kilter with Government policy and are therefore never propagated in official discourse. State power is exercised diffusely in relation to the dissemination of knowledge and the omission of politically inconvenient research evidence from official literature reviews. For example, *Taking Stock* (Deehan, 1999), the most widely cited Home Office review of literature pertaining to 'alcohol and crime' ignores a voluminous literature regarding the control of alcohol availability (except in relation to Portman Group-derived calls for extended hours). Similarly, the Cabinet Office Strategy Unit's *Interim Analytical Report* (Strategy Unit, 2003) which reviewed the evidence base that was to underpin the national *Alcohol Harm Reduction Strategy* (Op cit) has been shrouded in controversy. Critics of this review point to the undue emphasis placed upon individuals who 'misuse' alcohol or supply it 'irresponsibly' and the omission of any attempt to relate levels of harm to overall national consumption of alcohol or routine business practice. These are key issues for alcohol policy which have tended to divide the

scientific community on one side from the alcohol industry and the Government on the other. As the one alcohol expert put it:

"Every scientific committee I have ever sat on has concluded that reduction in harm caused by drinking can only be achieved by reducing our overall consumption. It just doesn't work to target a minority. The only people I have seen recommend this is the Strategy Unit" (Sir Richard Doll cited in Levy and Scott-Clark, 2004: 21-22).

Temperance campaigners, the Institute of Alcohol Studies (IAS) question the degree to which the Strategy Unit was allowed to conduct a genuinely impartial and objective review. IAS report the disbanding of a special sub-group of advisors set up to investigate the impact of alcohol consumption across the population as a whole and mysterious changes to the *Analytical Report's* original text. My own access to a 'leaked' draft of the report confirmed that the text had originally reviewed research findings from Finland, California and Western Australia. This research had drawn policy conclusions regarding associations between alcohol availability and alcohol-related harms – principally, in relation to outlet numbers/density and opening hours - that were inconsistent with the assumptions underlying the Act and the preferred approach of trade-affiliated lobby groups.[104]

When questioned by the IAS, the Strategy Unit refused to confirm at whose behest removal of the offending literature had been made. Although the changes radically altered the meaning of the text, none of the seventeen members of the expert advisory group asked for the changes to be made, nor were they even notified of them (Alcohol Alert, 2003: 4). Yet, the suppressed literature addressed themes of direct relevance to the practical deliberations of licensing. This 'inconvenient knowledge' was not discussed, it was simply excluded; its potential contribution to the public policy debate silenced within a document which purported to be the most comprehensive review of knowledge on the 'alcohol problem' every conducted by UK government.

[104] This story was covered in a BBC Panorama programme by journalist Andrew Davies screened 22.15 Sunday 6 June 2004.

These reflections prompt me to suggest that the official literature reviews pertaining to alcohol-related harm for England and Wales should be regarded as fundamentally political documents rather than neutral channels of information. Their diffuse affects include the ability to steer debate in politically convenient directions (errant consumers; quality and standards of premises) whilst avoiding political icebergs (supply side generators of harm, such as increased availability). The documents I refer to above, together with other official guidance such as the web-based *Alcohol-Related Crime Toolkit* [105] and information derived from industry sources such as the Portman Group and BBPA, constitute readily available resources for crime reduction practitioners and lay objectors. Yet, none provide a comprehensive or objective overview of the subject matter.

The Effects of the Information Disparity

A "common consequence of social privilege is the ability of a group to convert its perspective on some issues into authoritative knowledge without being challenged by those who have reason to see things differently" (Young, 2000: 108). Although media and public opinion appear to be turning against the Government and the drinks industry on alcohol policy issues (see Chapter 1) it remains difficult for this counter-discourse to influence the everyday deliberations of the courts: *Daily Mail* headlines lack the credibility of official literature reviews. Propagation of the official script continues to marginalize dissenting opinion to the extent that "only specialists would be likely to know things that fall outside it. For the ordinary citizen, one that doesn't have the resources or the time or the training or the education to really dig into things deeply on their own" (Chomsky, 1992: 15; 133) opportunities to resist remain highly restricted.

Attempting to challenge the interests of a powerful State-corporate nexus "is costly and difficult; high standards of evidence and argument are imposed, and critical analysis is naturally not welcomed" (Chomsky, 1989: 8-9). The information disparity has served to starve objectors and critics of Government policy (particularly those lay audiences who depend most upon official reviews) of access to the ammunition needed to fight their

[105] http://www.crimereduction.gov.uk/toolkits/ar00.htm

corner. Possession of this 'guilty knowledge' underpinned my field role and market value as an expert witness.

As noted in Chapter 1, local authorities have been issued with national Guidance in relation to their licensing functions (DCMS, 2004b). Any departures from this Guidance must be supported by *strong evidential justification*. This requirement conforms to the neo-liberal mode of governance wherein the everyday administration and implementation of governmental activity (the 'rowing') is devolved to a range of local bodies, whilst control of the system is centralized and 'steered' by the state (Osborne and Gaebler, 1992). Here one finds the information disparity impacting upon the local governance of crime. Local authorities only enjoy the option to depart from the Guidance if they have access to the necessary resources and expertise to conduct substantial research and evaluation, or can commission support from outside experts.

As Tombs notes, influence over the distribution of knowledge and research funding allows corporate actors to express "...the generalized power of scientific discourses, within which there is a presumption in favour of official, scientific–technical knowledge over (often superior) 'local knowledges'" (2002: 121).[106] Objectors are often thwarted in their attempts to generalize from the particular, falling back on personal experience and observations of local conditions that can all too easily be dismissed as 'anecdotal.' Police officers, in particular, often expressed frustration at being unable to access research evidence which reflected their own professional judgements and tacit occupational knowledge. They certainly could not rely on ready-to-hand information in the form of official publications as such documents were couched in the distinctly unsympathetic language of official discourse. In this context, the thirst for robust sources of local-level data became ever more acute (Hadfield and Elvins, 2003).

Applicants, by contrast, faced no such constraints. Their preferred approaches to harm reduction were widely propagated by Government and legitimized by inclusion in official literature reviews. Their arguments were thereby placed at the top of the hierarchy of

[106] In the licensing field, this occurs even though much of the most widely propagated knowledge may best be described as 'pseudo-scientific' (see Valverde, 2003).

credibility (Becker, 1967; Chomsky, 1989), further bolstering the ideological supremacy of a pro-business politico-regulatory agenda.

Summary

This chapter has described the pre-trial shaping of cases within an adversarial system of adjudication. It has identified a number of recurrent arguments and highlighted their importance as strategically organized components of case construction. The chapter also noted inequalities of power and influence between opposing parties in the alcohol policy debate. These disparities were reflected in the attempt by Government to selectively restrict the dissemination of research evidence. Such activities were seen as detrimental to licensing objectors in that they served to de-legitimize their arguments and obscure sources of empirical support, whilst correspondingly strengthening the cause of their industry opponents. The following chapter builds upon these insights by exploring ways in which the parties then move to promote and defend their interests in court.

Chapter 9

Notes from the Frontline: Licensing and the Courts

"The centrepiece of the adversary system is the oral trial and everything that goes before it is a preparation for the battlefield" (Devlin, 1979: 54)

The adversarial paradigm regards the opportunity to participate in a live oral hearing as fundamental to fair procedure (Galligan, 1996). Much previous research has focused upon the experiences of lay people as victims, defendants and prosecution and defence witnesses within the criminal trial (Carlen, 1976; Emerson, 1969; Linton, 1965; Rock, 1993). In the licensing courts, trials are constituted mainly as gladiatorial struggles between partisan teams of professionals, with only limited involvement by lay people. This chapter explores the methods used by opposing counsel and witnesses to pursue their goals. Particular attention is paid to the differential experiences of lay and professional witnesses as they attempt to negotiate the contested regulatory arena, deliver testimony, and maintain composure in the face of determined cross-examination.

In discharging functions of administrative law, licensing authorities and the courts are required to act fairly and in accordance with the rules of natural justice (see Manchester, 1999: para 5.08). The twin pillars of natural justice are the right to have one's case heard by an impartial decision-maker and the right of both sides to have their views heard before a decision is reached. More specifically, natural justice affords each side the right to know the case made against them and the opportunity to 'test' and correct such assertions.

Despite the relaxed rules of evidence in licensing trials (see Chapter 1) the predilection for oral testimony remains strong.[107] On a number of occasions, I heard the bench

[107] As noted in Chapter 1, licensing trials are quasi-judicial and therefore not bound by the hearsay rule. This means that, strictly speaking, although each party must be afforded a fair opportunity to comment on

indicate their intention to accord less weight to documentary and filmic evidence that could not be 'proved' by the appearance of a supporting witness (see Barnes, 1994: 37-9). The oral tradition employs cross-examination as its primary device for assessing the credibility of witnesses and unearthing evidence that might otherwise have been omitted or suppressed (Egglestone, 1978; Ellison, 2001; Pannick, 1992). The primacy of oral evidence and of its face-to-face testing is, in part, explained by the format of contests "waged on a day (or several days) in court" (Egglestone, 1978: 35) before an un-prepared decision-maker.[108]

The Format of Hearings

Advocates sought to exploit the wide procedural discretion of the administrative courts, identifying tactical advantage in the strategic manipulation of time. For example, trials would often begin with opposing submissions from counsel regarding who should 'open.' The bench's decision on this point then determined which chain of witnesses would be heard first. Once this initial skirmish had occurred, battle would proceed. Counsel would submit their 'skeleton arguments,' summarizing the empirical evidence, relevant legislation and case law. They would then offer guidance to the bench on appropriate reading from large paginated bundles of evidence. The first party would then present their case, calling a usually lengthy list of witnesses. The scheduling of witness evidence would be determined on an ad hoc basis as the trial developed. Each witness would step up to a raised witness box, swear an oath and then be led through their 'evidence-in-chief.' The witness would then be cross-examined by their opponent's counsel; followed

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and contradict their opponent's evidence, tribunals and courts, when exercising administrative functions, are not *compelled* to test evidence by cross-examination.

[108] Not all decision-makers in licensing cases are 'unprepared.' Licensing justices and Licensing Authorities are entitled, and indeed expected, to bring their own local knowledge and experience to bear on the applications brought before them. To this extent, they are akin to tribunals. Similarly, in some areas, District Judges hearing PEL cases in the Magistrates' Courts held some degree of familiarity with the issues, if only through their hearing of previous appeals. In Crown Court appeal cases the situation was noticeably different, with the bench usually appearing to have no previous experience or knowledge of *local* licensing issues at least. The rules governing liquor appeal cases actually required that magistrates sitting on the Crown Court bench were mostly drawn from other areas. Counsel for the applicants often saw advantage in this arrangement in that the involvement of a judge and a non-indigenous bench provided them which greater opportunities to steer trial discourse in the direction of legal theory and away from empirical matters in respect of which, the local justices, by dint of their greater familiarity with the area, may have held 'prejudicial' views.

by re-examination by their own counsel. Once the first party's evidence had been completed, the other side's witnesses would be called and the process repeated. When both sides had delivered all their evidence, each counsel would summarize their case in a 'closing speech.' Judgments were typically 'handed down' in writing some time later. These documents summarized the facts and arguments put before court and offering reasoned explanation for the bench's decision. The matter would then conclude with further submissions and pronouncements regarding costs.

Staging

Ethnographers of the criminal courts have drawn analytical insight from the paraphernalia of trial settings: the physical arrangement of the courtroom; the strategic control of time and the adaptation of conventional modes of communication (Atkinson and Drew, 1979; Carlen, 1976; Emerson, 1969; Rock, 1993). The organization of space and time has an important impact upon the experience of witnesses. For example, the witness is impelled to 'speak up' by the distance between self and audience, whilst the structural elevation of the witness box displays them for public scrutiny. Time is manipulated through the scheduling of testimony and attempts by counsel to control the style in which questions may be answered.

An important element of trial staging is the production of 'formality' (Atkinson, 1982; Atkinson and Drew, 1979). Evidential and procedural rules, for example, may assist in resolving such problems as how to conduct trials within finite time limits, organize turn-taking and assure topic relevance. Other rules govern the oral and bodily activity of participants. The entrance of the bench is both "staged and heralded" with a call from the usher to "All stand" (Carlen, 1976: 31). Participants and observers are expected to bow in the direction of the bench each time they enter or leave the court, to sit in silence unless called upon to speak, and to remain controlled in their gestures and movements.

Trials are notable for their peculiar speech exchange systems in which the sequential patterns of everyday conversation are eschewed in favour of a rigid question and answer format (see Matoesian, 1993: 107-9). As O'Barr, (1982: 17-18) notes, legal language ('legalese') can be extraordinarily wordy and pompous, unnecessarily repetitive, lacking

in clarity and "above all, simply dull." Words are given specific legal meanings or replaced by phrases from Latin and French; archaic and obsolete forms abound. In legal documents and oral submissions, lawyers will often use lengthy sentences containing professional jargon and a complex syntax. Legal professionals embellish their roles with deferential courtesies. Titles such as 'your honour,' 'your lordship' and 'my learned friend' highlight the self-justificatory assignment of hierarchy and control. In the higher courts, counsel and judges wear flowing gowns and horsehair wigs. In one case, I gave evidence before a High Court Judge, who, whilst hearing a quite unremarkable appeal to the Crown Court, was flanked by an equally elderly, cutlass-bearing 'guard' wearing body armour and a helmet plumed with ostrich feathers. Critical analyses have identified such staging mechanisms as variously strange, absurd, intimidating and incomprehensible to the uninitiated (Carlen, 1976; Emerson, 1969; Pannick, 1992).

Trial protagonists are involved in what Philip Manning refers to as the "production of credibility," a process "integral to both trust and deception" (2000:283). As Manning notes, "what is credible may or may not be true" (ibid: 293), the key concern for those wishing to achieve credibility is that it be *believable*. Credibility - the "quality of being believable" (ibid: 283) - is accomplished through interaction and is a necessary, and hard won component of persuasiveness. Manning points to Goffman's work as a sustained attempt to analyze the production and reproduction of credibility by means of the various resources and strategies people use to make their actions appear trustworthy and "convincing real" (ibid). In *The Presentation of Self in Everyday Life* (1959), for example, Goffman offers a 'dramaturgical' approach to social analysis in which the theatre forms the basis of analogy with routine interaction. According to this analogy, "man, the role-player, presents himself in different guises and with different masks, he collaborates in staging scenes and dramas, he makes use of props and settings, and he relies on a diversity of scripts" (Rock, 1979: 170). Dramaturgical analogies remain apposite when applied to the analysis of interactions within the small-scale, bounded and formal social setting of a trial.[109] Following Goffman, it is possible to think of courtroom

[109] The dramaturgical perspective, when understood as its author originally intended, as a comprehensive account of everyday life, is now widely regarded as inadequate (see Manning, 1992: 51-55). Critical readings of Goffman have dismissed the dramaturgical model as describing a "two-dimensional world in which there are scenes but no plots" (Manning, 2000: 292). Goffman himself chose to eschew the theatrical

interaction in terms of a number of dramaturgical metaphors, particularly those of actors, scripts,[110] performances, stages and audiences. The notion of a dramatic performance is congruent with the way in which the parties typically organize and frame their interactions, carefully orchestrating the impressions they convey to the court.

In the live conflict situation of a trial, the importance of impression management in the accomplishment of credibility is strongly apparent (Brannigan and Lynch, 1987). Within the courtroom, judges and magistrates are required to 'weigh' the evidence and make far-reaching decisions. In so doing, they inevitably act partly on inference from appearances. Opposing parties must therefore convey favourable impressions of themselves through the construction, maintenance and defence of their scripts and the personal/collective integrity of the actors. Credible and persuasive performances involve the strategic use of written, oral and bodily modes of communication. These performances must be enacted within a hostile environment in which opponents seek to actively undermine one's interactional accomplishments.

As Goffman (1959: 83-6) notes, impression management is often conducted as a team effort: "Individuals may be bound together formally or informally into an action group in order to further like or collective ends" (Op cit: 90). Each team member will seek to cooperate in presenting their audience with a particular definition, stance or version of events. Persons may be allocated various roles within the team: "whether the members of a team stage similar individual performances or stage dissimilar performances which fit together into a whole, an emergent team impression arises" (Op cit: 85). As noted in Chapter 8, witnesses are expected to co-operate with counsel in presenting and defending a largely pre-determined evidential script. The trial setting fosters a "competitive atmosphere likely to encourage the witness in the view that...if he fails to come up to expectations, or gives away too much in cross-examination, he has let the side down" (Egglestone, 1975: 432). The deepest of alliances foster relationships of "reciprocal

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metaphor when he went on to develop the themes of *The Presentation of Self*...in his later work (see Goffman, 1974). Yet, if their limitations are acknowledged, dramaturgical metaphors may still provide useful analytical insight in relation to specific social settings.

[110] The concept of 'script' was initially introduced in Chapter 8 in relation to the organization of case construction.

dependence" (Goffman, ibid). Each individual actor - be they a noise expert, traffic surveyor, licensing consultant or market researcher etc- will allude to, or seek to rely upon, some aspect of their team-mates' evidence. Such a deployment of skills and resources in the presentation of self and strategic management of evidence is crucial to effective engagement with the adversarial system. The following paragraphs explore the *differential capacities* of witnesses in attempting to accomplish individual and team credibility.

Court Rats and Real People

Important distinctions can be drawn between participants in relation to their degree of familiarity with the courts and legalistic forms of interaction. Differentially successful attempts to meet the perceived expectations of the court were observable in relation to the oral and bodily performance of witnesses; the presentation of self having an important impact upon the manner in which evidence was both delivered and received. Similar issues arose in relation to the professional competencies of counsel: their mastery of the brief, confidence, abilities and tactics in cross-examination and the eloquence and creativity of their submissions.

It is possible to typify two very broad categories of participants in the licensing trial: 'Court Rats' and 'Real People.'

Court Rats

Court rats are persons who regularly participate in licensing litigation as part of their work. They have learnt, by a process of acculturation, how to prepare for the courtroom and how to behave once inside it. Court rats pay attention to detail, often for strategic and instrumental purposes. They present themselves 'properly,' fulfilling contextual expectations with regard to dress, grooming and comportment. Court rats understand, and make an effort to comply with, courtroom ritual and etiquette. More specifically, they have acquired and nurtured presentation skills, including a range of linguistic and para-linguistic techniques, which can serve to enhance the potency of their communicative

performances (see Conley et al., 1978; O'Barr, 1982). Their ranks encompass legal professionals, together with 'professional witnesses,' including many applicants, police officers, local authority officials, licensing consultants and experts. The mark of a professional witness is experience, sometimes augmented by formal witness training.

Some court rats spend much of their working lives in court, whilst others are fairly infrequent attendees.[111] Of all court rats, it is the legal professionals: barristers, solicitors and their assistants, together with court staff such as Clerks to the Court and members of the bench (judges and magistrates) who have the deepest insider knowledge and status (see Rock, 1993). It is this insider group which controls use of time and space within the court, interprets the rules and conventions of procedural fairness, and shapes the delivery of witness testimony.

Real People

Lawyers sometimes used the term 'real people' to refer to amateurs - persons who did not regularly participate in licensing litigation as part of their work and who possessed only limited knowledge of courtroom mores. Real people and their testimonies added a degree of colour and authenticity to proceedings that was often lacking in the more scrupulous submissions of professional witnesses. Their stories were therefore regarded as important, but, all too often absent, constituents of the adversarial script. The characterization of Linda and Simon in Chapter 7 indicated ways in which the content of objections by lay persons has largely shifted in focus from moral entrepreneurship to a concern with 'quality of life' issues. Accordingly, real people were usually local residents and/or the owners of small non-leisure businesses.

Although most real people dressed formally when they came to court, a sizable minority wore more casual clothing and appeared to have paid little attention to their personal grooming. This, of course, was in marked contrast to the presentational style of court rats.

[111] Some professionals such as Accident and Emergency Department (AED) Consultants will appear as witnesses as part of their work on a very occasional and *ad hoc* basis. I do not typify such witnesses as court rats as their degree of involvement in courtroom culture is strictly limited.

As we shall see, significant differences between the two groups were apparent in relation to their oral and bodily performances. Some real people were better equipped than others to adapt to the expectations of the court. Middle class professionals, for example, were more likely to be familiar with public speaking, appropriate forms of self-presentation at formal social occasions, and the use of elaborated and technical language codes. All court rats, even those with formal legal qualifications, begin their courtroom careers as real people. The intricate requirements and expectations of the setting could be learnt only through repeated exposure (see Chapter 2 regarding my own 'moral career').

Know Thine Enemy

Notions of procedural fairness require that evidence be heard in full. As noted in Chapter 7, this means that real people may be forced to sit through hours of stupefying detailed submission and pedantic cross-examination. Most of the delays in court are caused by problems in the scheduling of court time and the length and detail of the arguments. In relation to the latter, real people may feel that their opponents are deliberately using time as a resource and weapon against them.

The adversarial and fateful nature of the trial can make waiting a peculiarly unpleasant experience. Lay witnesses will often find themselves in close physical proximity to their opponents. They may be required to share corridors, restaurants, waiting areas and toilets facilities with those they are effectively accusing. For men, the spatial arrangement of urinals, for example, can facilitate especially fraught encounters which need to be negotiated with care within a context in which the usual rules of civil attentiveness are suspended (see Williams, 1998). Application teams are predominately comprised of high status middle-aged men who often seem comparatively at ease within the courtroom setting. Their confidence, attire, and often bulky or toned body shape, affords them an imposing and sometimes intimidating physical presence.

Many court rats appear to know one other and during breaks in proceedings the lawyers among them typically engage one another in light-hearted banter. These exchanges indicate seemingly genuine feelings of mutual empathy and respect between a set of

protagonists who are 'simply doing their job' (see below). Although the more confident of non-lawyers may attempt to dissipate tension by engaging in jocular small talk, the interactions of professional witness and parties to the case are usually characterized by a more forced and formal 'politeness.' In the most bitter of struggles, this superficial etiquette may break down, to be replaced by the frosty exchange of grimaces, stares, sarcasm and wry smiles. Although one applicant quietly informed me that he intended to "nail me," overtly aggressive behaviour during waiting periods was rare. This said, talk was mostly serious and the atmosphere conspiratorial. Opposing teams would dominate the public spaces of the court as they huddled together in packs around be-wigged and gowned counsel. If briefing rooms were available, these groups would retire to discuss tactics and evaluate proceedings behind closed doors. Inexperienced witnesses might be seen sitting in corridors, red-faced and silent.

Once inside the courtroom, each team would align itself in bench seating behind counsel; one team to the right of the courtroom and the other to the left. The objection team - which rarely comprised of more than four witnesses - would be flanked by an application team, seated in rows like the ranks of some dark-suited army. In smaller courtrooms, the benches were often shorter and opponents would be forced to sit next to one another. Faces would become stern and solemn now. The applicant's court rat soldiers would rise from their trenches one by one to deliver their evidence, bombarding their opponents with argument after argument in an attempt to jettison the full script. As we shall see, the adversarial approach to adjudication sometimes had a profound effect upon the courtroom experience of lay witnesses. In the fog of war, inexperienced combatants became nervous and confused. Although officially 'released' by the bench after giving their evidence, many court rats chose to remain in court as spectators and advisors. Lay witnesses, by contrast, almost invariably left the battlefield as quickly as possible.

"There May Be Some Questions": Real People in the Witness Box

One senior counsel with whom I had previously conversed on friendly terms in an earlier case, made the symbol of a cross with his fingers when I entered the court. Although, on this occasion he was to be my interrogator, I was perturbed and surprised by this

somewhat hostile action. "I thought you liked me, last time we met," I asked. "That was when we were commissioning you," he replied with a grimace.

As Devlin (1979:61) notes, "the theory is that the witness is partisan; an advocate refers to him as 'my witness' and 'your witness.'" Witnesses were regarded and treated accordingly. When presenting evidence-in-chief, counsel engaged witnesses in a gentle, polite and conversational tone (see Rock, 1993: 29). The witness would be taken through their proof, with counsel strategically highlighting particular paragraphs that the witness was invited to confirm and/or explicate. As Rock (ibid) observes, witnesses were then required to face cross-examination, a form of questioning that was "neither gentle nor conversational."

Presentation of the objection script would often depend upon the testimony of real people. The objection case might therefore be immediately disadvantaged by a corresponding reliance on the neophyte witness. Public speaking under oath in a highly peculiar and formal social setting could be a disconcerting, even terrifying, experience. Once witnesses took to the stand, they might face a grueling cross-examination lasting several hours. All eyes would fix upon them. Compelled to reply to every question; their bodily as well as verbal performance would be scrutinized: posture, grooming, accent and delivery. As their testimony began, the dark rows would begin to whisper, smirk and sneer, sometimes emitting exasperated sighs. There might be a shuffling of papers as notes were passed forward to counsel: the applicant's foot soldiers being eager to please their general by supplying him with every ounce of available ammunition. Court etiquette required that answers be addressed to the bench rather than towards one's interrogator. To the real person this could appear strange and 'unnatural.' Answers were often stilted and mumbled and the witness would be asked to "speak up."

Cross-examination was often uninhibited, its object being to challenge, denounce, undermine and discredit (Ellison, 2001; Garfinkel, 1956; Rock, 1993). Counsel might use black humour to tease and goad the witness. Witnesses would often be humiliated, their opinions dismissed, integrity questioned, intelligence insulted and status belittled; they might be mocked and provoked. All of this was conducted in front of an attentive

audience. Yet, the role of the bench as decision-makers and impartial arbiters created an expectation of passivity in permitting counsel to proceed in making their case largely as they saw fit. This expectation militated against interventions by the bench to assist a witness in distress (Connolly, 1975; Devlin, 1979; Ellison, 2001; Pannick, 1987; 1992).

When facing cross-examination, many witnesses, and especially real people, displayed para-linguistic symptoms such as a shaking of the body; a flushed or pale visage; perspiration; fidgeting; avoidance of eye contact with others; and a tense and hunched posture. Unfortunately for the witness, these recognized signifiers of stress, anxiety and embarrassment are also popularly identified in the legal orthodoxy with deception. This concern with what is often referred to as 'demeanour' evidence is rooted in the highly contestable belief that dishonest witnesses will betray themselves by displaying a particular set of readily identifiable behavioural cues. These assumptions conflict with research in forensic psychology indicating that in trial settings and elsewhere non-verbal behaviours are characterised by many cultural, social and individual differences (Ekman, 1985; Ellison, 2001; Shuy, 1993; Wellborn, 1991). [112] As Ellison notes, these assumptions serve to discount "the high levels of stress commonly experienced by witnesses testifying in accordance with conventional adversarial methods" (ibid: 77).

Emotional Management

Goffman notes how social actors will usually attempt to project an impression of themselves which has "positive social value" (1967: 5). This projection is referred to as the *face* he or she presents to the world. During mundane day-to-day social interaction people perform "face-work" as they seek to regulate their own behaviour in order to maintain a consistency between their actions and their projected selves (1967: 12-13; Manning, 1992: 39). In most social situations, people conspire to protect not only their own face, but also that of others. Goffman regards tactful behaviour as a vital lubricant of interaction, one that is used to preserve social situations that might otherwise break down. The use of tact protects people from the distress and embarrassment that can occur when

[112] Ekman, (1985), for example, identifies verbal behaviours such as shifts in speech pattern and vocal pitch as more reliable indicators of veracity or perjury.

others perceive a disjuncture between their projected and actual selves: "Felt lack of judgemental support from the encounter may take him aback, confuse him, and momentarily incapacitate him as an interactant. His manner and bearing may falter, collapse and crumble" (Goffman, 1967: 8). In order to save face in encounters with others, one is expected to maintain *poise*, that is, one's "capacity to suppress and conceal" any feelings of shame (ibid: 9).

Trials are social settings in which this implicit ritual order is disrupted and new, more overt rules imposed. In court, social actors are formally restricted in their ability to protect the face of others. Witnesses present themselves in order to be 'tested' and to have their weaknesses exposed. Moreover, the adversarial system provides advocates with full justification and motivation to perform the role of interrogator with little thought for the feelings of opposing witnesses (Ellison, 2001; Rock, 1993). During cross-examination, people's face-work is directly and repeatedly challenged and any perceived inconsistency between one's projected and actual self may be harshly exposed. In order to withstand cross-examination, witnesses have to be 'thick-skinned.' In more formal terms, they must develop the performative capacity to control the expression of their emotions, measuring their responses and maintaining poise to an unusual degree. The witness box is a lonely place, to the extent that witnesses must save face without the interactional support of others.[113] Moreover, although placed in this situation of conflict, witnesses do not have license to launch disparaging counter-attacks against their interrogator. Witnesses are bound by the ritual order of the trial, which permits them only to respond to the content of questions. The character of one's accuser is not deemed relevant or challengeable in the way it might be during everyday argumentation.

Witnesses may be 'broken down,' becoming tearful, or making clearly exaggerated or aggressive outbursts. Such passionate responses are understandable. Real people will often have a significant personal stake in the outcome of a trial. Yet, to rise to anger or reply with sarcasm is to take counsel's bait. Such exchanges, displayed for critical

[113] In the case of 'procedurally unfair' questioning, a witness's own counsel may seek to disrupt the cross-examination in order to make an appeal to the bench. More direct assistance from counsel may only occur retrospectively in the form of prompts to clarify or temper certain points during re-examination. As noted, adversarial theory militates against protective interventions by the bench.

inspection in open court, permit counsel to engineer unfavourable impressions of the witness as overly emotional, irrational, narrow-minded or prejudiced. As Goffman notes, "a competent person is expected to retain composure even under the most trying circumstances; to become flustered and lose poise usually reflects adversely on one's character (1967: 97-8)."

Counsel must choose their victims with care lest they fall out of favour with the bench (see Du Cann, 1964: 122). In licensing, this requires 'going easy' on the frail and elderly. Whilst it would be easy, and perhaps tempting, for counsel to bully such witnesses, they will often have gained the respect and sympathy of the court through their presence alone. They may according receive a 'friendly,' if patronizing, cross-examination, focusing on mild questioning of consistency and the exposure of knowledge gaps, perhaps in relation to their own experiences of the streets at night.

Counsel will attempt to expose ambiguities and lack of preparation, casting objectors as 'NIMBYs' and portraying their objections as misguided and unreasonable. As noted in Chapter 7, campaigners are particularly susceptible to character assassination as their cause may be portrayed as non-representative, elitist, reactionary or doctrinaire.[114] To admit to holding strong established beliefs on a subject is to admit one's partiality. Far from consigning images of prudery to the dustbin of history, the denial of moral prejudice in licensing matters has served to re-emphasize such matters within adversarial discourse. Defending oneself *against the charge* of taking a moral stand is now one of the key challenges facing those objection witnesses who lack the recourse to notions of pseudo-scientific objectivity enjoyed by experts (see below). The legal masquerade demands an outward façade of dispassionate risk assessment. This is not easily understood by real people, particularly the chronically sleep deprived and those required to cleanse their steps of vomit and urine each morning. As both witnesses and observers, real people can be emotional; openly expressing their frustration, resentment and cynicism regarding the behaviour of licensed operators and their patrons. On occasion, they may perceive

[114] Correspondingly, counsel for the objector may enquire as to how supporters of the application were recruited; were they paid in money or kind? Do they have they any financial interest or personal or professional links with the applicant?

indications of bias and openly criticize and heckle the bench. Such behaviour challenges the sanctity of a carefully orchestrated formal occasion and invariably prompt stern chastisement.

Due to their perceived emotionality, legal professionals and other court rats may regard real people as flaky and unpredictable performers, their 'outbursts' compromising the most sound and rational of arguments. Use of language, choice of words and manner of delivery are regarded as all important in conveying acceptable and convincing arguments. The resident who is prompted to rant about the "young animals tearing up our flower beds" will give more negative account of herself than the person who calmly, determinedly and systematically catalogues specific instances of anti-social behaviour, whilst expressing well-informed sympathy for young people with few viable leisure opportunities.

Language Games

As well as directing a witness's emotions, counsel may also seek to manipulate their words. Counsel will make every effort to reframe an opponent's script as inconsistent, illogical or incoherent. In pursuing this destructive agenda, counsel may find assistance in the institutional rules governing interaction in trial settings. As noted, one important feature of courtroom interaction is that it does not conform to taken for granted norms of conversation and argumentation (Linton, 1965). Cross-examination, for example, is in many respects, a unique form of communicative action, "since it provides the questioner with immense authority, incorporates legal limitations on how a witness can respond, and is oriented to third-party judgement" (Brannigan and Lynch, 1987: 142). An extensive literature on the 'special' use of language within trials has shown, sometimes in painstaking detail, how advocates employ language strategically in order to denounce, coerce and persuade (Atkinson and Drew, 1979; Bennett and Feldman, 1981; Garfinkel, 1956; Jacquemet, 1996; Matoesian, 1993). Prescriptive guides to courtroom practice written by experienced lawyers often go into great detail in describing the application of tried-and-tested strategies for manipulating the content, form and timing of an opponent's

testimony (see O'Barr, 1982: 31-37).[115] This emphasis on occupational acculturation and the inculcation of practical skills implies that courtroom success can, to a large degree, only be accomplished through purposive interaction.

The Exercise of Discursive Control

One frequently observed tactic of advocacy involves the termination of a particular line of questioning immediately a contrast, admission, or apparent anomaly has been engineered. Cross-examination has a game-like quality. Once a 'goal' has been scored, the scorer will often seek to leave the field of play. The phrase "I have no further questions your honour," followed by a lengthy pause, is often used to provide the umpire with an opportunity to recognize and ponder some "incongruity with, and hence damaging puzzle over, the witness's evidence" (Drew, 1985: 145-6). As Shuy (1993: 144) notes, in everyday conversation, a person would usually have the opportunity to say: "Wait a minute. I haven't had a chance to tell you what I meant." The trial is not a setting where such emendations can easily be made: "witnesses can only answer questions that they have been asked. They cannot volunteer new topics or start new question/answer sequences. Once cut off, they must be quiet. Once misunderstood, they must live with the misunderstanding" (Shuy: ibid).

Termination devices may therefore leave the witness in a state of frustration; feeling that their answers have been 'edited' by counsel in order to change the meaning or emphasis of their words, or to submit a distorted and incomplete impression of their opinions (see Shuy, 1993: 137-148). When attempting to control and direct topics to their advantage, counsel may insist that the witness answer questions with a simple 'yes' or 'no.' This technique seriously restricts the witness's freedom to express and explicate matters: "They may want to tell the whole truth and nothing but the truth but they are prevented from doing so by the very process that demands it" (Shuy, 1993: 136). As O'Barr (1982: 119) points out:

[115] There are many practical guidebooks on the tactics of advocacy aimed at the neophyte barrister, some of which have attained the status of classic texts, retaining their relevancy over several decades and frequently reappearing as reprints and revised editions (see, Bailey and Rothblatt, 1971; Du Cann, 1993; Hyam, 1999; Munkman, 1986; Napley, 1970; Wellman, 1997, Wrottesley, 1930).

"One of the most frequent complaints of witnesses, especially first-time witnesses, is that they had little opportunity during the trial to tell their version of the facts. Instead, they typically report, the lawyers asked only *some* of the relevant questions and consequentially they only managed to tell part of their story."

Clearly, counsel will often be very sophisticated language users and the professional skills and resources they bring to bear in cross-examination can place less proficient language users, or indeed almost any inexperienced lay person, at a significant disadvantage (O'Barr, 1982; Shuy, 1993: 202). Lay witnesses will often perform poorly, presenting an unconvincing case even when their evidence is highly credible in terms of factual content (Conley et al, 1978). Shuy (1993: 136), himself an experienced expert witness, notes how "most witnesses are not skilled enough verbally to match attorneys who are practised in winning their cases. They are not aware that in every question they are asked, a possible trap is lurking." However, in this game of 'cat and mouse,' the interrogated are, of course, not passive: "The success or failure of denunciation ...hinges on the nature of the response made by the denounced" (Emerson, 1969: 142).

Defensive Strategies

Counsel's purposive manipulation of question-answer sequences in order to avoid certain topics whilst emphasizing others "can also be the basis on which the witness may detect that purpose in the questioning" (Atkinson and Drew, 1979: 134). Witnesses who understand the basic nature of the adversarial system are "generally cautious in the way they answer questions...alive to the probability that counsel will try in various ways to upset their evidence" (Drew, 1990: 40). Witnesses have to be confident and assertive enough to disrupt the unilateral flow of counsel's questioning by making measured and qualified answers, using responses such as "Yes, but." Proactive witnesses will frame their answers in such a way as to best exhibit and defend the script that they and their team mates are tasked to present, whilst taking care to "avoid endorsing those aspects of cross-examining counsel's versions that differ from or are detrimental to their own version of 'the facts'" (Drew, 1990: 62). Witnesses may seek to anticipate and disrupt the

course of counsel's questioning; giving qualified answers at every available opportunity, with the aim of denying counsel "the materials out of which an accusation may be built" (Atkinson and Drew, 1979: 187).

When direct responses to an accusation cannot be avoided, the witness may seek to employ defensive devices that counter or dissolve the discrediting implications of counsel's charges. These linguistic forms are not unique to the setting and have been variously described by sociologists as: excuses and justifications (Atkinson and Drew, 1979; Emerson, 1969; Scott and Lyman, 1968); and techniques of neutralization (Sykes and Matza, 1957). Witnesses use such devices in order to negotiate the preservation of favourable impressions before the court in relation to personal and team identity and the credibility of their script. As we saw in Chapter 8, due to the largely scripted nature of the evidence presented in licensing cases, it is possible for protagonists to anticipate possible challenges and draw upon a pool of well-rehearsed counter-arguments. Crucially however, access to the argument pool is differentially and asymmetrically allocated in accordance with professional knowledge and/or trial experience. Real people will typically have limited awareness of the range of possible responses and can make none of the claims to legitimate opinion available to their 'expert' adversaries: "A person of lower status has a weaker claim to the right to define what is going on; less trust is placed in her judgements; and less respect is accorded to what she feels" (Hochschild, 1983: 173). The defensive options open to the lay witness may often be restricted to "giving delayed and qualified responses, expressing apparent confusion about the questions, and agreeing with the prosecutor (sic) in only a hypothetical and minimized way" (Brannigan and Lynch, 1987: 115). In "manoeuvring around the cautiousness of witnesses" (Drew, 1990: 62), counsel may seek to frame such responses as evasive.

In sum, cross-examination can be characterized as a struggle between advocate and witness over impressions of credibility and persuasiveness. The rules of the game are loaded in favour of the interrogator who controls the selection, sequencing and juxtaposition of evidence, determines the topics to be raised and their relative emphasis and seeks to restrict the submission of embellished or narrative testimony (Atkinson and Drew, 1979: 187; Ellison, 2001; Matoesian, 1993: 35; 100).

Pride and Prejudice: The Examination of Experts

Clerk to the Court (preparing for witness to be sworn in): "What oath do you swear?"

Expert witness (academic): "Doctors swear the Hippocratic Oath"

The examination of experts and consultants (henceforth referred to as experts) invariably begins with a brief review of their credentials. The listing of title, qualifications and institutional affiliation serves to draw the court's attention to the peculiar identity of the witness; a process that immediately presents them in "the best possible light" (Bennett and Feldman, 1981: 138).[116] Invocation of professional status and expertise establishes a 'membership category' entitling the witness to exalted claims to knowledge that "obviate the need to ask how the person knows" (Potter, 1996: 126; cited in Williams, 2000: 126). Moreover, the witness is imbued with 'authority,' constituted as a set of personal and/or institutional resources that can be drawn upon to justify their views and make their opinions 'count' (see Williams, 2000: 126-129). 'Category entitlements' to authoritative speech help to legitimize the witness's testimony and to some extent modify the usual expectations that a witness will have detailed empirical knowledge of local particularities (see below). The knowledge claims of experts, when matched by their apparent independence, are important factors in influencing their selection for the team. During the trial, these status-related entitlements effectively translate into a set of practical resources to be deployed both offensively and defensively in interaction by experts as they seek to promote their evidential script.

The realities constructed through the presentation of scripts are validated and brought to life through the testimony of witnesses and remoulded in the exchanges between witness

[116] In jury trials, the Crown Court Bench Specimen Directions offer guidance to the Judge on the adducing of expert evidence. These instructions give a clear sense of how the court proposes to limit the potential influence of expert evidence. No comparable directions are issued in the licensing courts. This permits counsel to build up their own experts or diminish their opponent's, free of any of the guidance used in jury trials. Indeed, in licensing cases, lawyers are able to refer to people as 'experts' who would never qualify to give evidence in criminal trials, e.g. ex-police officers acting as 'licensing consultants.'

and lawyer. Chapter 8 described how counsel will seek to shape their team's case in preparation for trial. Counsel will them aim to reproduce this script through strategic interaction during the trial itself, engineering an artificial fit between what was prepared and what is presented. In order to maintain the coherence of the script, counsel must collaborate closely with their team, each individual working hard to process disparate information and present it within the appropriate interpretative frame. The lawyer carefully leads the witness through her testimony, "offering cues about how broadly to answer the question, what to volunteer and what to anticipate in the next question" (Bennett and Feldman, 1981: 121). This is accomplished by phrasing questions to one's own witnesses in such a way as to elicit tactically 'useful' responses, whilst at the same time, using emphasis to make some pieces of evidence appear more significant than others. Counsel may also use evidence-in-chief as an opportunity to draw out any potential weaknesses in a witness's testimony and assimilate them into the script, thus "stealing a cross-examiner's 'thunder' and neutralizing the effect of detrimental evidence" (Ellison, 2001: 52).

As noted, a key tactic of counsel is to ask questions that require very precise and concrete answers, thereby corralling debate within the boundaries of their script and narrowing the possibilities for broader or alternative interpretation. Bennett and Feldman (1981) refer to a struggle between opponents to expand or contract the range of potential interpretations of the evidence. Questions are tactically designed to elicit "definitions of evidence consistent with the larger underlying story that is being developed" (Bennett and Feldman, 1981: 121). In staging this endeavour:

"It goes without saying that the degree of success...depends a great deal upon the willingness of the witness to cooperate and his or her ability to respond to the cues in a line of questioning. Some witnesses are more cooperative and more receptive to cues than others. As a rule, expert witnesses...are the most effective partner with whom to play out a tactic of co-operation...Expert witnesses generally have schooled the lawyer in advance on the terminology that can be applied to their evidence...and they deliver a confident line of testimony...expert witnesses get a lot of practice in trial situations. This hones their sensitivity to the tactical moves of their examiners. Not only does this experience

make expert witnesses excellent players in a cooperation game, it also enables them to disrupt effectively the efforts of opposing lawyers to orchestrate their testimony" (Bennett and Feldman, 1981: 124).

Through courtroom experience, the court rat has learnt to control the expression of his or her emotions. This emotional work involves studied attempts to avoid the sort of 'breakdown' or disruption of testimony described in relation to real people. Rock (1993: 61) notes how counsel "were, in short, performers whose composure and command could contrast quite tellingly with that of the ruffled civilian: they were the managers, not the managed, the cool, not the heated." Both counsel and professional witnesses were well rehearsed in the art of what Goffman (1959: 211) refers to as "dramaturgical discipline'... the crucial test of one's ability as a performer." The court rat is a "disciplined performer" who has learnt to suppress "spontaneous feelings in order to give the appearance of sticking to the affective line, the expressive status quo, established by his team's performance" (ibid). As Goffman explains, to exercise dramaturgical discipline is also to display loyalty to one's team. Like all teams, the licensing team values and rewards its members for acts of self-discipline and loyalty. Loyalty to team involves a willingness to reflexively monitor one's performance. One must seek not only to perform to the best of one's ability, but also to limit and repair any damages to team credibility sustained in the course of one's performance:

"...a performer who is disciplined, dramaturgically speaking, is someone who remembers his part and does not commit unmeant gestures or *faux pas* in performing it. He is someone with discretion; he does not give the show away by involuntarily disclosing its secrets. He is someone with 'presence of mind' who can cover up on the spur of the moment for inappropriate behaviour on the part of his team-mates, while all the time maintaining the impression that he is merely playing his part" (ibid: 210-11)

If disruptions to the script cannot be avoided or concealed, perhaps because of the submission of new and destructive information by one's opponents, or because of a faux pas committed by oneself or one's team mate: "the disciplined performer will be prepared to offer a plausible reason for discounting the disruptive event, a joking manner to

remove its importance, or deep apology and self-abasement to reinstate those held responsible for it" (ibid: 211). The reparatory/defensive devices open to experts and other court rats are generically identical to those I referred to above in relation to real people. Many concrete examples of reparation responses in licensing trials were, of course, described in Chapter 8. Yet, "to establish such defences successfully before an often hostile and suspicious audience requires the skilful use of various techniques of presentation - in short requires a competent performance on the part of the...actor involved" (Emerson, 1969: 144).

"It's the way you tell e'm" (Frank Carson)

As Rock (1993: 32) concludes, each side's case is "a *thesis*" to be defended in a manner that is "substantially rhetorical." Some combatants are more accomplished orators than others. Court rats may have benefited from extensive pre-trial training in courtroom presentational skills (see Solon, 2004). Also, as regular team members, they will simply be more experienced than real people. This means that they may have presented similar evidence on numerous occasions in the past; attended many more pre-trial conferences; and have a greater familiarity with the argument pool. In sum, they will have become seasoned team members, playing their own well- rehearsed and finely tuned parts in inter-dependent cooperation with counsel, their director. These accumulated skills, when combined with claims to exalted knowledge, served to enhance the oral performance of experts.

Expert witnesses were particularly notable for their articulacy, refined elocution, succinctness and comparatively relaxed, open and confident demeanour. Many experts were able to maintain a 'sunny disposition' throughout their testimony and were able to smile or crack an inoffensive joke even during periods of intense questioning. Experts would often embellish their testimony with colourful metaphors and anecdotes, making the performance of lay witnesses appear 'wooden' and staid by comparison. As well as using humour and charm to woo the court, experts typically delivered their testimony in a loud, clear and dispassionate tone. Strategic communicative action can be understood as a pre-requisite of courtroom credibility and persuasiveness (Brannigan and Lynch, 1987).

By applying their refined skills of impression management, experts were able to portray their client's script as positive, benign and reasonable, thereby often winning the sympathy of the bench.

Research in the field of forensic oratory has long indicated associations between styles of speech, previous trial experience and various social indices of status, class and educational background (Conley et al., 1978; O'Barr, 1982). In transcripts of the testimony of lower status groups and lay persons of all social backgrounds, research has found a greater incidence of language types thought to undermine the credibility of oral evidence in formal legalistic settings.[117] In their co-authored research, Conley and O'Barr associate more confident and 'powerful' testimonial styles with witnesses of high social standing in society at large and/or in those persons accorded high status by the court. In particular, people who testified repeatedly on the basis of their professional expertise displayed few features of a 'powerless' speech style. As I found, expert witnesses were more assertive and successful than lay people in their attempts to prevent counsel from controlling and misrepresenting their evidence.

These factors have an important impact upon the interactional performance of witnesses within the adversarial system. *Form* matters as much, if not more than, content (O'Barr, 1982). The generally more confident and assertive testimonial style of professional witnesses, particularly experts, may have a favourable influence on the reception of their testimony quite independently of the validity and truthfulness of what is said. Conversely of course, the nervous, hesitant, faltering and disjointed style more often displayed by lay and/or inexperienced witnesses, is likely to be less persuasive. The evidence of such witnesses may appear to be less credible simply by virtue of the manner in which it is presented (see Conley et al., 1978: 1392; Egglestone, 1975: 432; Ellison, 2001: 23; O'Barr, 1982: 69-70). In sum, reflexivity, loyalty and confidence were the marks of a consummate 'professional' performance by expert witnesses and other court rats. These interactional skills had been honed by repeated exposure to the adversarial system and

[117] These included hesitant forms; hedges; intensifiers; fragmented narratives and heavily accented or hyper-correct speech (see Conley et al., 1978: 1383)

nurtured through the application of pre-existent resources derived from social status and exalted claims to knowledge.

Attacking the Knowledge Claims of Experts

Counsel (abruptly, with a sneer):

"So you are a Criminologist? Perhaps you could tell the court what that means? and what it has got to do with my client's application?"

During cross-examination counsel may launch a direct attack on the knowledge claims of experts, questioning aspects of their experience, professionalism and other sources of entitlement. Witnesses assigning themselves the status of a 'scientist,' for example, may be asked whether their work has been subject to independent peer review. The witness may be presented with unfavourable reviews, or asked to disclose the sources of their research funding. If a witness is young or comparatively inexperienced, their biography may be unfavourably contrasted with the maturity and experience of an opposing witness. Conversely, the validity of knowledge claims made by older and/or higher-status witnesses may be challenged by dint of their social identity, which, it is insinuated, effectively debars them from an understanding of the youthful and visceral mores of the night-time city. Occasionally, counsel will attempt to test the witness by asking them something that might reasonably be expected to fall within their range of expertise: a random technical question, or a question which tests their knowledge of the law or current policy debate. If the witness is unable to answer, answers incorrectly, or even hesitantly, then counsel may succeed in casting doubt over their professional competency.

As Rock (1993) notes, adversarial trials remain bastions of empiricist thought, placing a heavy reliance upon fallible human capacities of observation and memory. Events experienced at first-hand, as described by witnesses, are usually of great interest to the court, however unrepresentative they may be. For this reason, experts may find that their exalted claims to knowledge are insufficient to prevent criticism of their evidence wherever it relies upon secondary sources of information and deductive reasoning

presented in the form of negative counter-evidence (see Chapter 7). However grand the expert's reputation or deep their retrospective knowledge of similar events, if their analysis lacks an empirical basis they may find themselves exposed to quite predictable lines of attack: How, if one has not experienced the brand/the area at first hand, can one possibly be entitled to form a valid opinion? Perhaps the witness has visited the area, but only briefly and at the wrong time, or on the wrong day. The day of the visit may be said to be unusual in some way: a public holiday, date of a major sporting event or emergency. Perhaps the weather was unusually fine or inclement? This emphasis upon the 'directly observed' and 'observable' extends to the expectation that a witness will have attended trial proceedings throughout and be aware of any issues raised during the examination of previous witnesses. Experts in particular, may be criticized for failing to address the arguments and proposed solutions of their opponents.

The epistemological assumptions of the licensing court are compromised by the bench's almost universal lack of experiential knowledge regarding the matters upon which they are tasked to adjudicate. Judges and police officers, for example, usually inhabit very different social and professional worlds, allowing for a divergent interpretation of the facts, anchored in quite different realities. In a setting where the only 'bad news from the streets' emanates from objection witnesses or from media reporting, rather than from direct experience, objector testimony can more easily be re-framed by the applicant's counsel as vexatious rumour, ill-informed anecdote or exaggeration. As Bennett and Feldman (1981: 175) remark:

"Bias can result when an adequate story is told, but the listener lacks the norms, knowledge, or assumptions to draw the inferences intended by the teller. The internal consistency and the significance of stories can be damaged if listeners and tellers live in different social worlds and hold different norms and beliefs about social behaviour."

This issue is illustrated in the following extract from my own cross-examination in a Central London PEL appeal trial:

Counsel: "If the premises close were to close at 3am where do you think customers would go?"

PH: "I don't know"[118]

Judge (intervenes laughing): "well, they'd go home wouldn't they?!"

Counsel (with a smirk): "yes, your honour"

The need for lawyers and the bench to understand the implications of the evidence that is put before them places an onus upon experts to impart technically sophisticated knowledge in a clear and concise manner (Thompson, 2004). Experts are expected to be effective communicators who are capable of simplifying esoteric concepts and avoiding use of their own occupational jargon. As the following extract from the cross-examination of a psychologist indicates, being "too academic" can create a breakdown in communication which prevents evidence from being properly tested:

Counsel: "So do you think there is any relationship between the number of licensed premises in an area and the amount of crime?"

Witness: "Yes, the relationship is inverse"

C: "Inverse? You mean as number of pubs goes up, crime goes down?"

W: "Yes, this is generally observable. As competition increases, so standards rise and the crime rate falls. Good management accounts for 45% of the variance of assaults."

C: "Where does that figure come from?"

W: "It comes from my own research"

[118] My reasons for giving this answer will be apparent to readers of the section on extended hours in Chapter 4, see also Hadfield and contributors (2005b) for a more detailed analysis.

C: "Did you say variance?"

W: "Yes, variance"

C: "Could you explain that term please?"

W: "Variance is the mean of the sum of the squared deviations from the mean score divided by the number of scores. The larger the variance, the further the individual cases are from the mean."

C: "Oh never mind! Let's move on"

A clash can occur between counsel who for strategic reasons, may wish to elicit opinions expressed clearly and authoritatively in 'black and white' and the more conscientious of experts who maintain that, in truth, they can only provide a range of conclusions. Counsel may gain advantage over experts who appear pedantic, unable to clearly communicate their ideas and unwilling to proffer unambiguous conclusions. Benches will often share the legal mind-set and interpret their answers as evasive.

When selecting members of a team, counsel's choice of experts is, to a large degree, influenced by their reputation or known ability to perform. Counsel shun witnesses whom they find to be 'difficult,' 'flaky' and 'inconsistent,' or whose input has to be continually monitored and controlled by means of time-consuming and detailed instruction. The experts in greatest demand are loyal co-conspirators who understand the broad script and its parameters. Such witnesses do not need to be groomed as they will, for the most part, already know what is expected of them and how to deliver it. Expert witnesses therefore have a clear financial incentive to please counsel by providing a loyal, disciplined and partisan service. Generous remuneration ensures a ready supply of alternative 'legal resources,' eager to supply whatever a client requires. Thus, the expert's earnings, notwithstanding any other sources of income, become dependant upon a willingness to compromise (see Becker, 1963). It is by such means that licensing litigation, as an

inherently market-driven, adversarial and aggressively instrumental approach to dispute resolution, militates against the principled and conscientious witness.

Relationships of patronage and reciprocal inter-dependence between counsel and experts are an open secret in licensing circles, allowing issues of partially to emerge as the expert's Achilles heel. As we shall see, questions of objectivity, or its lack, arise as major themes in cross-examination.

Rhetorical Piping, Subliminal Tunes: Questioning the Objectivity of Experts

"It is easy for consultants to imagine themselves philosophers and their clients enlightened rulers. But even should they be philosophers, those they serve may not be enlightenable. That is one reason I am so impressed by the loyalty of some consultants to the unenlightened despots they serve" (C. Wright Mills, 1970: 200)

Applicant (owner of an independent bar chain) protesting to the court about my presence: "The Council is using this man as a weapon against me."

District Judge (curtly): "He is not a weapon; he is a witness who is here to assist the court"

In formal legal orthodoxy expert witnesses are held to owe an overriding duty to the court rather than to the party that commissions them (Harding, 1992; Thompson, 2004). Yet conversely, in a live adversarial trial setting it is usually taken for granted by participants that opposing witnesses will hold firmly entrenched allegiances to their team. Conscientious experts therefore find themselves in an uncomfortable and ethically compromising position. From the moment they accept their commission, they will begin to feel the weight of their client's expectations. As hired hands they will be expected to 'know their place' in the team, deferring authority to counsel. At team meetings and other briefings, counsel may outline confidential strategies for fighting the case; tactics will be devised and the witness's advice may be sought. The expert will receive instructions regarding the type of evidence required. Counsel will, if only tacitly, indicate that such

evidence must assist, and in no way prejudice, the case. To remain useful (and therefore employable), experts must be flexible in allowing themselves to be used as weapons of adversarial engagement. Once their report has been prepared it will be submitted to counsel as a *draft*, and any potentially damaging remarks or offending paragraphs will be edited or removed at counsel's behest. Counsel may attempt to influence a witness's interpretation of the facts and request further work on any point he or she wishes to emphasize.

If inexperienced, the expert may produce written work that is considered syntactically inappropriate: too wordy and academic, or loose and naturalistic in style. Counsel may provide detailed instructions for revision of the text in order to 'encourage' the witness to adopt the 'clear and concise' style of a legal proof of evidence report. The standard of the report in terms of both content and presentation may be markedly poor and the witness may produce reports that appear to be hurried adaptations of a generic template that has been submitted in many previous cases. Experience fosters risk-aversion; a reluctance to tamper with tried, tested and finely-tuned arguments that appear both safe and *sufficient*. In deviating from the script, a witness risks setting their client's case adrift; find themselves in uncharted and dangerous waters where they may flail, and ultimately, perish. If experts play the game as instructed they are less likely to shoulder the blame if things go wrong. Were they to produce a substantially 'unhelpful' report it would simply be rejected and they would probably receive no further instructions.

Seasoned experts present a veneer of objectivity in all 'front stage' interactions. As noted, they are also often adroit and persuasive witnesses, allowing cross-examination to become an extended battle of wills. In challenging the testimony of experts, counsel will seek to reveal partiality, vested interest, evasion and half-truth (Du Cann, 1964). In exploring what he refers to as the 'sociology of lying,' Barnes (1994) defines lies broadly as "statements that are intended to deceive." He then breaks such statements down into two types: 'omissive lies' which involve the withholding of information and the evasion of questions, and 'commissive' lies that involve the distortion of information. When taking the oath, the witness swears to tell 'the truth, the whole truth and nothing but the truth,' yet, "though the injunction presents its three parts as equally important, in practice

lies of omission are widely regarded as less reprehensible than lies of commission; they also provide fewer possibly vulnerable statements for the opposition to latch on to" (Barnes, 1994: 37). As noted in Chapter 8, the adversarial system works in such a way as to reward each party for omitting evidence that is unfavourable to its case. Issues of omission must then be unearthed by cross-examination, as the following dialogue illustrates:

Counsel for applicant: "Can you describe the instructions you were given by the Council's solicitors before making this videotape"

Witness: "I was asked to visit the area late at night and record goings on"

C: "How many hours did you spend in the area"

W: "About ten hours over both of the two Saturday nights"

C: "But you didn't film for all of that time did you?"

W: "No"

C: "Were you instructed to film anything in particular?"

W: "Yes, the Solicitor told me to look for sources of noise, police activity and trouble going on, that sort of thing"

C: "Well, true to your brief, you found some urination and the like. But would it be true to say that you only pressed record when you saw something of interest, something adverse or bad going on?"

W: "I filmed the things I thought were relevant"

C: "Yes. And how long is the final tape?"

W: "Fifty four minutes"

C: "So, for nine hours and six minutes you saw nothing worth recording did you?"

W: "I only filmed when things started to happen"

C: "Quite. (pause) I have no further questions"

The rhetorical strengths of the evidential script and its constituent arguments reside as much in omission as in content. The most popular approach to expert evidence involves adoption of a narrow frame of reference for debate, one which ignores the holistic view and selectively omits issues or details of potential detriment to one's case. Constructing a mask of objectivity requires a sophisticated understanding of the argument pool. This permits an opponent's perspective to be acknowledged, if and only if, it can be assigned low credibility or priority. For such reasons, the cross-examination of experts will often focus more upon what their testimony omits rather than what it actually contains.[119] These spaces between the truth and the whole truth are counsel's most fertile hunting grounds.

In the testimony of experts, analytical rigour was notable for its absence. There was little recognition of complexity, ambiguity and doubt, with experts selecting only those studies which were supportive of their client's case. Witnesses would go on to employ this restricted literature uncritically when developing their own arguments. For the reasons outlined earlier, benches themselves never sought to question the comprehensiveness of expert evidence. As Harding notes in relation to other types of regulatory trial, it is somewhat ironic that systems which ostensibly rely upon the weighing of 'objective scientific knowledge' should afford such "special authority" to experts and thereby contradict the "self-critical activity" of scientific endeavour (1992: 135; see also Goff, 1995).

[119] As noted, in an adversarial and partisan system, the omissions of one party's script are likely to constitute the content of their opponent's case and vice versa.

There are, of course, dramaturgical advantages to be gained from adopting such a blinkered approach. The confident witness who states her opinions baldly in 'black and white terms' may often prove more convincing than the witness who tempers her evidence with talk of methodological fallibility and the limits of knowledge (Egglestone, 1975). In his dialogue with Gorgias, Socrates characterized oratory as the art of persuasion and the giving of affective pleasure rather than the teaching of truths or quest for knowledge. For Socrates, the orator did not possess any authentic 'craft' but simply a skill for rhetoric, a knack for entertaining, convincing and pleasing her audience:

"Oratory doesn't need to have any knowledge of the state of their subject matters; it only needs to have discovered a persuasion device in order to make itself appear to those who don't have knowledge that it knows more than those who actually do have it" (Plato, *Gorgias*, para 459c)

Many experts enthusiastically espouse a 'cause' and have gained reputations for presenting particular sides of the debate. They may even be regarded as aligned with individual parties.[120] Some become embroiled in the politics of trade protectionism obliging them to request advice from regular employers whenever they receive enquiries from a new client (for example, solicitors representing a competitor and/or objector, see Charity, 2002). As one classic commentator notes, dogmatism, in its strongest form, involves, the expert becoming "so warped in their judgment by regarding the subject in one point of view, that, even when conscientiously disposed, they are incapable of expressing a candid opinion" (Wellman, 1997: 76).

The client portfolios of some experts read like a 'who's who' of the drinks' industry. In one trial, counsel told the court that one member of his team had completed "over 150 previous reports for pub companies" (noise expert); whilst another had the benefit of "23 years experience in giving evidence in planning and licensing cases" (surveyor/licensing

[120] In cases of serious disagreement between experts, the courts have the power to order the opposing witnesses to meet in order to clarify areas of agreement and disagreement. I did not encounter a trial in which this occurred.

consultant). A third expert was described as being "very familiar to everyone in licensing" (market surveyor). Such descriptions can be used to enhance the credibility of a witness only within a context in which it is assumed that the decision-makers hold "a formalistic legal view of impartiality and expertise" and "are prone to accept this ideology and appeal to its authority as a basis of establishing fact and drawing inferences" (Harding, 1992: 135).

Undue bias can be insinuated by the probing of a witness's financial interests or business practices. One consultant openly admitted that the purpose of his business was to "help operators obtain their licenses." Counsel also discovered that the man's wife held substantial shares in the applicant's company. Witnesses may be asked how many times they have given evidence on behalf of their client; how often they have given evidence in total and how often they have worked for the 'other side' (applicant or objector generically). The witness's choice of words may be found to indicate bias. One Crown Court judgment criticized an expert for answering questions in an evasive manner and expressing his "faith" in the applicant's brand. Experts are expected to strongly refute suggestions of bias by "*dramatizing* their innocence"; that is, by charging their responses with indignation and hurt (Brannigan and Lynch, 1987: 136). Defence of professional integrity is the sole circumstance in which experts and other court rats will deliberately employ readily observable emotional cues, as on these occasions, it is often assumed to *enhance*, rather than detract from, the persuasiveness of their words.

In Chapter 7 and above I referred to the submission of negative evidence by experts, that is, evidence purposely commissioned as a critique of an opponent's position. As well as the open submission of verbal and written critiques, negative evidence can take the form of confidential briefing notes for counsel. The presentation of evidential critique can be played out repeatedly in the courts in a series of moves and counter-moves which develop incrementally, case by case. These tactics can spell danger for the experts concerned. Counsel may seek to expose or construct antagonistic rivalries between the witnesses. The notion of a feud or personal grudge can be used to discredit one or more of the witnesses involved. If seen to 'touch a nerve,' this line of questioning can be used to

undermine testimony by implying malevolence. Such events can stall, or even put an end to once lucrative careers as a legal resource.

Although enacted in courtrooms across the land, licensing trials provide a window onto a small, highly specialized and incestuous professional world in which all the key players know one another, at least by reputation. In this world, 'dirt' is dug and gossip traded; professional performances appraised; and reputations molded. Experts inhabit the periphery of this world. For them, the maintenance of good working relationships with counsel and the main commissioning legal firms is crucial. Work is episodic, shifting from periods of overwhelming intensity to the quiet times, when commissions are sporadic or virtually non-existent. A popular witness in high demand one year may be discredited, castigated and regarded as unemployable by the next.

It is rare for an expert who usually appears on behalf of an applicant to change sides and appear for an objector (and vice versa). It may be assumed that those who occasionally 'change sides' might better protect themselves against accusations of bias. However, unlike advocates, witnesses do not enjoy immunity from the charge of inconsistency. Previous reports, publications and statements may be used to mount potentially damaging attacks on the expert's integrity and honesty. There may be other dangers involved in attempting to 'swap scripts,' which, under cross-examination by an effective counsel, can be exposed to devastating effect:

In one high profile trial - involving an appeal by *Regent Inns PLC* against the decision of a Magistrates' Court which favoured the police - the reputation of a private investigator regularly employed by their competitors *Luminar Leisure PLC* (but in this instance, giving evidence on behalf of the police) was severely damaged. A hostile cross-examination, which focused upon the witness's role within a trade protection feud between *Luminar* and *Regent* (see Chapter 4) was reflected in the Crown Court's judgment. *Regent's* counsel implied that the witness bore grudges against his client's company and an opposing witness and may even have been 'planted' in the police team by *Luminar.* The bench's acceptance of this criticism represented the death knell of a

nationwide consultancy career which had reputedly earned the witness over £3k per week.

Thus, the expert must proceed with caution, ever mindful of the transience of her utility and market value. Loyalty, obedience and courtroom success are rewarded by amenable and lucrative working relationships. Yet, these links are tenuous. Licensing litigation is a hard-nosed business in which no one is expendable. The systematic pressures and professional mores of a market-driven adversarial system militate against the submission of impartial testimony. For this reason, the careers of the system's foot soldiers can be unpredictable and short-lived as each individual eventually succumbs to discredit under hostile cross-examination and adverse judgment. The performance of witnesses is ruthlessly monitored: "Experts who do well stay in the little black book and those that do not are summarily removed" (Solon, Op cit: 17).

Handbags at Dawn: The Dueling of Gentlemen

"Solicitors...like to please their clients and for that purpose...pick a good fighter" (Devlin, 1979: 59)

Trials are "suspenseful" and "fateful" (Danet and Bogoch, 1980: 38) for participants and especially for the opposing parties in whose names they are fought. The trial is inherently dramatic in that it involves conflict - "conflict between two versions of reality" (ibid). Yet for counsel (those actors who perform the leading role), the fateful events of court may be experienced as "merely a show" (ibid), a somewhat sterile demonstration of professional competence involving little connection with personal values. As a barrister interviewed by Rock (1993: 83) opined, "Counsel are only putting a case. You don't believe in your case. You suspend belief. You are simply a vehicle for putting a case." This is not to say that counsel make no emotional investment in the outcome of their trials. In 1996, a trade team defeated their police rivals in a Crown Court appeal case concerning the opening of *Liberty's* nightclub in Nottingham. *Liberty's* proved to be a landmark case which opened the floodgates for the development of Nottingham city centre, an area which, at the time of writing, contains 356 licensed premises within one square mile (Green, 2004). In

interview with BBC journalist Andy Davies, the specialist solicitor advocate Jeremy Allen, who acted for the applicants, recalled his feelings:

"That was a *huge* moment, I mean, it was just fantastic. It was just like Nottingham Forest winning the European Cup. We kept a reasonably straight face in *court*, but I can remember coming out and just punching the air, we were so thrilled" (*Panorama*, 6 June 2004).

Many advocates appear to live for the court. The trial provides them with opportunities to pit their wits against respected opponents and to display flair, intellect, humour and charm in front of an attentive and appreciative audience. Cross-examination, the peculiarly legalistic form of social interaction that can be such a terrifying and degrading experience for the lay witness, may often be regarded by counsel as exciting and creative work, a sport or art form even (Wellman, 1997). In their attempts to manage the trial as a social occasion, counsel must continually assess the mood of the bench,[121] reflexively adapting their own performances accordingly. The arguments of an opposing team and explicit prejudices of the bench are obstacles to be negotiated. Counsel must be thick-skinned and persistent, taking every opportunity to make "mountains out of molehills" (Pannick: 1992: 5).

These challenges have a game-like quality, serving to make trial interaction more exciting for the court rat as (despite the existence of various structural and systematic skews) outcomes remain unpredictable and successes hard won. Convoluted exchanges between counsel that may, to the uninitiated lay observer, seem dry and boring, can, for the actors themselves, represent a form of self-affirming 'edgework' which tests the boundaries of

[121] The parties do, of course, face something of a judicial lottery. Benches are not always impartial. Some may be openly critical or dismissive of one side's witnesses and adopt a harsh tone with one counsel, whilst showing warmth to her opponent. The bench may display such biases through facial expression and bodily stance and also linguistically via expressions of exasperation such as sighs or 'tuts.' Questions from the bench may be worded in particular ways and from a certain perspective which serves to indicate that they have already accepted the assumptions or propositions of one side in preference to those of the other. These 'warning signals' are closely monitored by court rats in order to monitor the 'feel' of how a case is progressing and its likely outcome. Actions of the bench are carefully scrutinizing for any signs of bias which may be construed as grounds for appeal.

professional competence: "What they seek is the chance to exercise skill in negotiating a challenge, rather than turn their fate over to the roll of the dice" (Lyng, 1990: 863). Opposing counsel "tend to be fiercely competitive, anxious (sometimes obsessed) to win" (Pannick, ibid: 6).

In the socio-legal literature one finds frequent use of metaphors which liken the trial to physical violence and warfare (Danet and Bogoch, 1980: 42; Pannick, 1992: 89). As Danet and Bogoch (1980: 41) argue, "the adversary model of justice requires the attorneys representing each side to be highly combative, and, moreover, to be evenly matched in combativeness...to be combative is to be ready or inclined to fight; pugnacious." For Devlin, "it is in cross-examination that the British trial comes closest to fisticuffs" (1979: 58).

The gladiatorial cut and thrust of advocacy is approached with gravitas. It is considered a matter of professional courtesy to remain on civil terms with one's opponent. Protocols of formal address such as "my learned friend" reveal more than a "euphemistic legal amity" (Pannick, 1987: 154). As noted, during breaks in proceedings, counsel will usually converse with one another in a friendly and sociable manner. Fraternization is important to the occupation subculture of trial lawyers, it allows the "impression of opposition" to be "dramaturgically speaking...shown up for what it partly is - the purchased performance of a routine task" (Goffman, 1959: 193-4). In even the most embittered battles, counsel will usually attempt to sprinkle their linguistic blows with puns or self-depreciatory comments. These lighter moments are mixed with requisite expressions of deference and sycophancy, as counsel attempt to establish a rapport with all but the most hidebound of benches.

Such courtesies are rarely extended to opposing witnesses. As discussed in Chapter 8, advocates are occupationally conditioned to regard themselves as having an overriding duty to defend the interests of their client. Professional efficacy therefore demands an indifference to the welfare of one's opponents. To empathize is to betray one's client, an action which amounts to professional suicide. As Rock (1993: 174) found, "those who

dwelt too much on the pain of the lay witness would not last long as effective advocates." [122]

Of course, witnesses often *are* evasive. Some will try to avoid giving straight answers or seek to side step or ignore fundamental points. The challenge for counsel is to remain dogged in their pursuit of answers, exposing unsubstantiated rhetoric and material omission, question by question. The raw and unprepared testimonial style of the real person can sometimes be interpreted as conveying honesty and accomplished advocacy may expose the gulf between the court rat's cautious, scripted and politicized approach and the more open and natural answering style of the naïve real person.

When questioning their own witnesses, counsel will "seek to elicit testimony ... in a manner that enhances its persuasive impact," using "deliberate juxtaposition, repetition, and duration to emphasize or disguise the significance of certain information" (Ellison, 2001: 52-3). These devices are notably theatrical, "brilliant advocacy focuses on the strengths of the case and tugs at the emotions of the audience" (Pannick, 1992: 7).

For every winner their must also be a loser. Those performances and interpretations judged to be most compelling will prevail. The differential competencies of counsel often prove significant in contributing to the eventual outcome of trials and correlate with both the inequitable financial resources of opponents and the verdict of cases (see Langbein, 2003). These asymmetries of power, which serve to challenge and skew notions of civil justice and due process, were fully acknowledged in licensing circles. Such inequities have long been individualized by liberal commentators who regard them as no more than inevitable quirks of a healthily functioning legal system:

"Although all advocates are equal before the law, in court they continuously flaunt their own inequalities. The lawyer regards this with indifference, even when the result is reflected in a verdict, since it is to some extent inevitable... If the system were to be

[122] Counsel enjoy "a blissful immunity" from the legal consequences of defamation and cannot be sued for words spoken in the course of a trial even where 'malice and misconduct' can be shown (Pannick, 1992: 94-5). As we have seen, they are licensed denouncers (Emerson, 1969; Garfinkel, 1956) who benefit from "a standing invitation 'to be clever at someone else's expense'" (C.P. Harvey, cited in Pannick, 1992: 95).

changed merely in order to guard against disparities in skill in advocacy it would lose more than it would gain. For to curb the natural abilities of the advocate would (be to) rob him of his independence and freedom..." Du Cann (1964: 9-10)

Yet, solicitors and their clients were far from "indifferent" in their selection of counsel. Barristers who performed well were held in high esteem by the trade, with some companies negotiating retaining contracts which guaranteed preferential access to their services and protection from 'poaching' by their enemies. Elite specialists were feared opponents whose victories were the stuff of occupational legend. Some had forged reputations as "licence machines," on the basis that as an applicant, you approach them, "press the right buttons and your licence emerges" (Collins, 2002: 46). Pressing buttons was an expensive pursuit. One barrister, frequently representing applicants in the toughest cases nationwide, could reputedly command fees of up to £30k for a two-day trial. It is platitude to note that access to such representation was assigned by wealth, power and connections.

A Plague of Court Rats: Trade Teams on Tour

Licensing hearings are dominated by expert witnesses and it is application teams who rely most upon their services, some calling as many as 12-15 in each trial. Trade interests therefore not only benefit from the most accomplished and vociferous counsel, but can also call upon the largest army of loyal and experienced mercenaries. When a nightlife brand is being rolled out across the country, the captains of industry together with their carefully selected counsel and accompanying entourage of lawyers and professional witnesses go on tour, descending on any town where resistance to their applications is met. The repeated rehearsal of evidence in licensing courts nationwide allows these 'away teams' to present especially consummate performances. As we have seen, evidence and arguments are refined, oral performances polished.

When the corporations come to town, effective opposition is rare. For many lay objectors it will be their first time in court. Home teams are comparatively under-funded, ramshackle and amateur, intimidated by the pinstriped swarms they see moving

effortlessly from swish hotel to crumbling court in a fleet of executive cars. In one case, in which an industry conglomerate joined forces with the police to oppose a new nightclub application, I was commissioned by the trade group in order to save police costs. The following describes my introduction to the world of the 'away team':

The first day of the trial has drawn to a close and I am asked to attend an out-of-hours meeting at the trade team's hotel. It is anticipated that I will be called to give evidence the following morning. I join the team which consists of Counsel Jeremy Forbes-Hamilton, solicitors, legal secretaries and a selection of licensing consultants. I enter a lounge which is tastefully decorated and expensively furnished in a contemporary style. The group order generous quantities of alcohol, teas, coffees and plates full of handmade biscuits as they discuss the day's events: the pronouncements and mannerisms of the bench; the performance of witnesses and their opponent's counsel. After about half-an-hour of chit-chat, counsel takes me to one side to discuss my report and the briefing notes I have been asked to prepare. He seeks to test my knowledge and attitudes and tease out any information I may be able to offer regarding Dr Dray, an expert due to give evidence on behalf of our opponents.

I am placed in an uncomfortable situation, as I know that in another case, in only two weeks' time, these roles are to be reversed. On this forthcoming occasion, Forbes-Hamilton will be representing the applicant and cross-examining me! Furthermore, he will be commissioning Dr Dray, and there will, in all likelihood, soon be another meeting such as this in which my reputation and evidence will become the target. I am mindful not to say anything which might damage my next client's case, or render me vulnerable to attack on other occasions. In the world of licensing, time is money and conversations with counsel are always conversations with a purpose. My interrogator is a skilled communicator and seeks to put me at ease. I am asked about a colleague's reluctance to give evidence; the number of times I have given evidence; who else I am working for; how many times I have been matched against Dr Dray? He pumps me for personal information about Dr Dray: what do I think of him? How well regarded is his work? Who funds it? Counsel admits that he has commissioned Dray before and alludes to the man's well-known drink problem, but he won't elaborate. We play a strange game of cat and

mouse in which he does all the purring and I squeak. We both know it's not just about this case. He mentions quite casually that this will probably be the only time we are both on the "same side," so it's "a unique chance to get to know one another." In other words, I'm a one-off hired hand. I answer questions accordingly. The conversation is generally friendly and occasionally entertaining, if somewhat stilted. I am anxious to appear helpful and excited to be placed in a new and intriguing situation. I want to help him win the case, but I'm cautious not to be too easy with my opinions or say anything too controversial.

It was with such insight and focused determination that trade teams prepared for battle. Applicants won around 80% of the cases in which I was involved. To pursue a sporting analogy, although home teams scored the occasional 'giant killing' victory, away teams enjoyed certain fundamental advantages. Chiefly, they had greater financial resources and better, more expensive, players. When reflecting on his teams' past glories, acculturation of the ruthlessly instrumental logic of the adversarial system permitted one lawyer to be candid:

PH: "When you turn up in court with the best barristers and a team of expert witnesses, do you think it is an equal contest?"

Licensing Solicitor: "No, not an equal contest at all. I am there to get the best result for my client and usually we do just that"

Conclusion: The Power to Persuade

This chapter has explored the contestation of the night within the administrative courts. It has described the trial experience of various combatants and their use of various interactional devices. Trade teams typically possess superior resources; however, they cannot meet their desires simply by command.[123] Their opponents also possess varying degrees of knowledge, experience and financial reserves which are deployed in an

[123]Although (as noted in Chapters 4 and 7), they can and do use the threat of litigation as a spur to concession and capitulation.

attempt to resist imposition of the corporate will. As we have seen, in order to accomplish courtroom success, each team must strategically apply its resources in pursuit of particular interactional goals, such as "information control, impression management, and remedial results" (Rogers, 1980: 103).

Interactionist scholarship has long been criticized for failing to acknowledge structural inequities of power,[124] yet from an interactionist perspective such critiques are misguided. Interactionists typically regard structure as a dynamic concept which can be best defined as constituting 'conditions of action.' The issue of inequality is therefore approached in a different way from that of sociologists who regard 'structure' and 'agency' as separate elements, each with its own distinct ontology. For interactionists such as Schwalbe et al (2000: 439):

"To speak of linking *action* to *structure* implies the need to build a theoretical bridge between different orders of social reality. But from an interactionist standpoint, there is no need for such a bridge, one end of which would rest on a reification - 'structure' being a metaphor for recurrent patterns of action involving large numbers of people."

As these authors go on to clarify:

"It is equally mystifying to think of a distribution of wealth, status, power, education, or other resources as a 'structure' to which action must be linked. A distribution of resources, be it equal or unequal, is not a structure, it is a *condition* under which action occurs...What is it then that exists *beyond a setting* and constrains action within it? It can only be the actual or anticipated action of people elsewhere, enabled (or constrained) by the resources available to them" (Schwalbe et al 2000: 439-440).

Purely 'structural' analyses thereby fail to acknowledge the processes through which inequalities are constituted and have little to teach us about the ways in which

[124] See, for example, Gouldner's (1970: 378-90) criticisms of Goffman.

asymmetries of power, influence and control are manifested, resisted and reproduced in everyday life (see Anderson and Snow, 2001; Branaman, 1997; 2003; Rogers, 1980).[125]

In exploring conditions of action within concrete settings, interactionists see social actors as having a range of different skills, resources and capacities at their disposal. Crucially, the differential power of actors rests in their ability to intentionally deploy these resources in interaction. Actors must strategically manipulate their resources in such a way as to direct the course and outcome of their interactions with others. In conflict situations such as a trial, the asymmetrical possession of skills, resources and capacities may influence one's ability to present oneself effectively and control the impressions one projects. Those actors who have the least access to resources are likely to face the greatest number of interactional constraints[126] including a more limited capacity to defend themselves against an opponent's denunciations. However, what happens in face-to-face interaction can only be analysed inductively. It may be that a form of inequality results, but the question of *how* this occurs must be explored empirically. As Schwalbe et al (2000: 420-1) note, "...the reproduction of inequality, even when it appears thoroughly institutionalized, ultimately depends on face-to-face interaction." In order to explain, rather than merely document inequality, one must attend "to the processes that produce and perpetuate it" (ibid). The researcher should be alert to the ways in which "symbols and meanings are created and used to sustain the patterns of interaction that lead to inequality" and "how inequality itself is perceived, experienced, and reacted to, such that it is either reproduced or resisted" (ibid). The power to persuade through 'strategic interaction' (Goffman, 1969) is enhanced not only by form, but also by *content.* Credibility can be accomplished more easily if one's 'message' conforms with, and makes direct appeal to, dominant ideology (see Giddens, 1976: 112-13). As noted in Chapter 8, ideological factors impact upon trial discourse by serving to artificially enhance the persuasive power and credibility of trade arguments.

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[125] This distinctly interactionist approach to the study of social stratification (the theoretical import of which has not always been explicitly articulated) has struck a chord with scholars wishing to develop more complex and empirically grounded analyses of inequality (see the special issue of the journal *Symbolic Interaction* (2001, 24/4).

[126] See Goffman's analysis of the "territories of the self" in *Relations in Public* (1971: 28-41, especially 40-41).

Going to court is a gamble for all parties, as trial success, like all interactional accomplishments, is precarious (Goffman, 1959). Yet, those actors who find themselves ill-equipped to effectively engage more resource-rich adversaries, and whose testimonies can be construed as obscure, may find that their opinions are afforded little credibility. Inequities in verbal and non-verbal communicative performance between applicants and objectors and especially between counsel and professional witnesses in comparison with lay witnesses, not only reflect existing relationships of power, but also play a key role in constructing, legitimizing and perpetuating such relations. Differential and asymmetrical interactional constraints therefore tend to shape trial proceedings, favouring the establishment and maintenance of hierarchies (Branaman, 2003). The industry's success in the licensing courts can therefore be understood as a product of its recurrent effectual performances; a reflection not only of enhanced access to material resources, but also of patterned interactional accomplishment. The claim to have 'earned' one's successes, of course, only serves to further legitimize one's position of privilege. Yet, winning battles is made easier when one has powerful weapons at one's disposal and the biggest and best trained army. Just "...as settlements depending on physical means favour the physically strong and powerful, settlements depending on verbal means similarly favour people who are either on their own or through their advocates most able to manipulate words" (O'Barr, 1982: 11). However, as Bennett and Feldman (1981: 150) note:

"...if rhetoric, style, legal moves, diversionary behaviours, and the like, matter, their impact lies in their connections to key structural elements of the stories in a case. In other words, it is simplistic to explain the effectiveness of lawyers in narrow terms of oratory, charismatic presence, or legal knowledge. Effectiveness is more a function of whether these and other resources can be employed selectively at critical junctures in the development of the overall story."

Courtroom success relies not only upon the effective deployment of powerful oratory and other linguistic strategies, but also upon the 'backstage' preparation of scripts and the enhanced ability of expert witnesses to work with counsel in promoting them. Deep understanding of the argument pool, combined with fluid, but at the same time,

strategically focused interaction, forms the essence of consummate professional performance. These performances distinguish the court rat from the real person.

Trade teams are systematically advantaged by the adversarial mode of adjudication. Many facets of courtroom dramaturgy from the physical staging and procedural strictures of the trial, through to the establishment of knowledge claims, management of emotions and the paralinguistic presentation of the self, assist trade teams (more so than objectors) in their attempts to skilfully promote the evidential script whilst denouncing the cause of their adversaries. All of these factors help to explain the practical success of trade teams: their success at persuasion within the confines of a specific mode of adversarial adjudication. The implications of their recurrent successes are explored in the following (and concluding) chapter of this thesis.

Chapter 10

Summary and Conclusions

"Commercialism, in its freedom to follow unrestrainedly wherever the profit motive seems to lead, appears to have the advantage over other city forces and institutions" (Cressey, 1932: 288)

"After a long process of expanding individual freedom and relaxing social and cultural restraints, control is now being re-emphasized in every area of social life- with the singular and startling exception of the economy, from whose deregulated domain most of today's major risks routinely emerge (Garland, 2001: 195).

This thesis has explored the contestation of the night in British cities. Chapter 1 introduced the reader to the central themes and boundaries of investigation. The study was located within existing literature, essential terminology was explained, and background information provided as a prerequisite to subsequent exposition. In providing an account of the research methodology, Chapter 2 paid particular attention to the personal biography of the author and its constitutive role in processes of ethnographically-derived analytical induction. The chapter attended to ways in which the acquisition of knowledge may be understood as a journey in which the ethnographic traveller learns through the accumulation of experience. From this perspective, the author's understandings of the sights and sounds encountered in the field were unavoidably informed and enriched by reflexivity; that is, by an awareness of his capacity to mould a self-consciously unique mode of acculturation to the setting.

The City

Part I of the thesis began in Chapter 3 with an exploration of cultural understandings of the night and the role of nocturnal movement as a recurrent theme in competing notions of escapist transgression and social order in urban public space. The Medieval curfew was identified as a mechanism of order-maintenance *par excellence*, premised upon the maxim of 'the less movement, the less mischief.' Medieval urban governance responded to the diurnal cycle of light and darkness, with the night regarded as fostering dangerous opportunities for concealment and surprise. Public street lighting was introduced by early-modern States, not as a public service to make the streets more navigable after dark, but rather as a technology of control to suppress disorder and political dissent. The streets were lit so that on-street surveillance and identification might be reciprocal: in order to maintain the desired balance of power, both controller and controlled should see and be seen.

Popular night-time leisure emerged in the cities of Eighteenth Century Europe, which, in addition to benefiting from advances in artificial light, were experiencing great political and economic change. Opportunities for more active nightlife rapidly developed as population growth and the new technologies of industrial capitalism created pressures toward incessancy which swept away the last remnants of the old nocturnal order. The night was increasing regarded as a time of wakeful activity, commerce, entertainment and escape from the dark, squalid and dreary living conditions endured by much of the urban population. Towns and cities featured a growing array of entertainment for the bourgeois and worker alike. With darkness partially conquered by artificial lighting, night-time activities outside the home became increasingly associated with notions of social, economic and technological progress. New themes of contestation emerged such as organized crime, prostitution and the closing time of entertainment venues. Many of those who opposed nightlife were anti-urban reactionaries who sought to combat the 'moral degeneracy' of the city by evoking ancient anxieties. An ongoing struggle developed between the representatives of a strict nocturnal order and those who wished to

exploit the night for business and recreation; the NTE thereby emerged as an appendage and driver of progressive urban lifestyles and culture.

Commercial appropriation of working class traditions of vibrant public sociability fostered the gradual dissolution of rigid Victorian restraints and the heralding of a new age of public informality quite distinct from that of more peripheral areas in which the opportunities of the night had yet to be exploited. From the mid-Nineteenth century onwards, this commercially-induced process of democratization, though far from complete, did promote a greater intermingling of the sexes, classes, ethnic and racial groups, and latterly sexualities. Licensing law, policing policy and the decisions of the local magistracy clearly impacted upon the availability of alcohol- yet nightlife involved much more than drink- and regulatory activity did little to halt public appropriation of the night or the dissolution, however partial and incremental, of class-based and patriarchal modes of oppression.

In Chapter 6, I argued that the rise of the contemporary night-time high street had begun to place this historical process of democratization into reverse. As noted in Chapter 4, high street expansion occurred contemporaneously with the regulatory suppression and commercial appropriation of alternative nightlife cultures such as 'Rave,' an influential youth movement which rejected alcohol in favour of other recreational drugs. This process was assisted by neo-liberal modes of governance characteristic of a post-industrial economy. Regulatory constraints which had once held the alcohol-based leisure market in check were gradually either removed or rendered impotent. The drinks industry used its newly won freedoms to exploit the night's economic potential. Its strategy focused upon the development of branded and homogenized leisure enclaves within central urban areas. This pursuit of profit maximization was accompanied by a number of harmful externalities, one of which being the atrophy of social inclusion.

Whilst in the day-time economy, consumer perceptions of security were considered a prerequisite of commercial success, in the NTE, suppliers and consumers nurtured an atmosphere of excitement and release. As demonstrated in Chapter 6, market forces shaped the communal spaces of the night-time high street accordingly. Leisure

corporations had effectively created a bounded and purified social setting; a nocturnal playground for the exclusive use of their own consumers. As the sites of active engagement in collective rituals of mass hedonistic consumption, these streets had become zones of objective danger, effectively removed from the public realm and foreclosed to the wider community. On a conceptual note, I thought it questionable whether interaction settings devoted almost entirely to the pleasures of intoxication could be conceived as 'disorderly'; drunken, boisterous and even violent behaviour being contextually commonplace and unremarkable and thereby conforming to an identifiable and, to some extent, predictable pattern. I contrasted these homogenous consumption zones with more inclusive public spaces of the city, which although 'disorderly' and often dangerous, conformed more closely to the liberal democratic ideal.

In helping to create such social environments, the hidden hand of the market had re-established an almost medieval sense of exclusion and fear of the night and effectively placed much of the central urban residential population under curfew. The proliferation of licensed premises also encouraged litigious jousting matches between corporate aristocrats. Chapter 4 noted how this intra-trade rivalry involved attempts to gain or retain commercial advantage through selective manipulation of the regulatory system and the waging of alcohol price wars to protect profits and market share. Custodianship of night-time public space, which had, for a brief historical period, been primarily governed by administrative bodies and the public sector in accordance with a vision of social democracy, was returned to the holders of political and economic power. Fiefdom, absolutism and authoritarian states had been replaced, but, like their predecessors, the new corporate overlords employed private armies of lawyers, sycophants and bruisers to protect and retain their control of the night.

The theme of commercially, rather than publicly, imposed social order was brought to the fore in Part II of the thesis. Chapter 5 was concerned with social control in licensed premises. It highlighted a tendency in the research literature to focus upon individual or limited combinations of factors in the strategic management of crime risk and a consequent failure to acknowledge the purposive, complex and interconnected orchestration of security-related activity. The chapter explored how security roles in

licensed premises became: (i) intrinsic to the work of all members of staff who dealt directly with the public; (ii) constituted as a 'team effort' involving staff performing a variety of ostensibly un-related work tasks; and (iii) quite *atypically* required reactive intervention by dedicated security staff and the public police. Key differences between venues in their approach to the social control problematic were acknowledged. These disparities reflected the premise's physical and social location within a differentiated leisure market.

Chapter 6, by contrast, described how public policing of the *streets* was more often reactive, and increasingly reactionary. Although frontline police officers regarded maximal tolerance as a prerequisite of the policing task and a mark of professional competence, this mode of control did not fit the political requirements of Central Government. The concern of the Executive was to assuage the fears of an anxious electorate, whilst at the same time, maintaining its intimate and supportive relationship with the drinks industry. As Garland notes, there continues to be "a real reluctance to penalize the 'suppliers' of crime opportunities that contrasts markedly with the enthusiasm with which their 'consumers' are punished (2001:127). The ethics of free trade and doctrine of consumer sovereignty inherent to neo-liberal governance eschewed direct market intervention and promoted a public policy stance which regards the control of consumption and any related harms as the sole responsibility of individual consumers and suppliers. As the story of the Act's development in Chapter 1 implies, the State's failure to respond to the criminogenic externalities of *routine* business practice on the high street have served to compromise its ancient and basic function as the guardian of public order. Chapter 6 concluded by describing how, as political disquiet about levels of violence in the high street gathered pace, the state-industry nexus concerned itself with criminalizing errant consumers, vilifying industry 'bad apples,' conducting sporadic high-profile 'quality of life policing' campaigns, and promoting toothless voluntary self-regulation.

The Trial

"The basic mechanism in the resolution of conflicts is not an equally shared, communitarian allocation of truth, but rather an allocation of truth based on dominance over communicative processes" (Jacquemet, 1996: 11)

Chapter 4 highlighted a number of specific tactics developed by the industry's legal representatives to successfully mould and navigate the regulatory terrain. Part III (Chapters 7-9) developed this theme by identifying the licensing trial as a key arena of contestation. Chapter 7 explored the role of various social actors within the licensing field including applicants, local authorities, residents; police; competitor businesses, expert witnesses and licensing consultants. The Chapter noted how licensing litigation required the expenditure of considerable amounts of time and money. These burdens tended to disadvantage objectors when preparing, presenting and defending their case. Residents typically required the financial and technical support of third parties in submitting their objections. In regulating the activities of business, police licensing departments generally sought to achieve compliance informally by nurturing regular personal contact with licensees. During pre-trial negotiations, both applicants and the police would often attempt to broker deals involving some form of 'pollution levy.' However, some police forces regarded the spatial distribution of premises as fundamental to the generation of crime; concerns which could not be eradicated by the tweaking of operational practice. From the applicant's perspective, investment locations were invariably non-negotiable. These vitally opposing interests ensured that compromise and goodwill were easily destroyed. Trials would proceed as corporate developers persisted in their drive to secure commercially-prized development sites.

Chapter 8 explained how licensing hearings conformed to the basic assumptions and commitments of an adversarial system of adjudication. This involved litigation up to the point of trial being left in the hands of the opposing parties, with the bench acting largely as naïve umpires, rather than informed investigators. In this system, the parties define the parameters of the contest, promoting and suppressing such evidence and legal propositions as they think fit. The opponents present their case with care. For applicants,

the testimony of witnesses selected from the local community is often combined with the findings of specially-conducted market research and customer attitude surveys. Expert opinion is also presented, requiring opponents to seek conflicting opinion in order to avoid being placed at disadvantage before the court. As in other spheres of regulatory litigation such as planning appeals, a whole legal and extra-legal industry had developed, primarily to assist applicants pursuing commercially-directed goals. Specialist licensing barristers were identified as the linchpins of this enterprise. It was they who conducted the trials and orchestrated the pre-trial crafting of cases.

Noting that persuasion is the ultimate goal of a trial advocate within the adversarial process, Chapter 8 described how specialist licensing barristers prepared for trial by shaping a disparate collection of evidence into a coherent and overarching case. These cases were referred to as 'evidential scripts.' Scripts were partisan and incomplete, their purpose being to promote a version of reality in antithesis to the account advanced by the other side. The clash of scripts involved the imposition of opposing frames of reference: application scripts offered a version of reality as seen through 'rose-coloured spectacles,' whilst objection scripts typically contained a 'prophecy of doom.' Scripts were adversarial devices intended to *persuade*. As such, allusions to complexity and ambiguity had little place within them (being regarded as *concessions* to one's opponent).

The formulation and rehearsal of scripts was a 'backstage' activity in which only a trusted inner circle would participate. Counsel worked closely with a team of witnesses, briefing each in advance and editing, shaping and approving their written submissions. An 'argument pool' was identified, from which components of each script were drawn. Arguments from the pool served as flexibly applied and adaptive resources for legal practitioners, their clients and other witnesses. They addressed basic themes in licensing around which the particularities of each case might be creatively explored. Individual arguments and counter-arguments were rehearsed in the testimony of each witness in order to 'hammer one's message home.' As such, the argument pool offered practical weapons of choice for legal duelling.

Trial protagonists did not however have equal access to the argument pool. Chapter 8 went on to highlight the relationship between Central Government and the leisure industry in attempting to control the agenda of debate concerning alcohol-related harm. Much of the suppressed information concerned empirical research findings of direct relevance to the administrative deliberations of the courts. In particular, official literature reviews (and industry-derived research/guidance publications) were identified as fundamentally political documents, rather than neutral channels of information, from which 'inconvenient' research evidence had been omitted or removed. Thus, an inequality of access to information was identified which exclusively disadvantaged objectors, i.e. those parties, whose views were typically out-of-step with Government policy. These State-sponsored attempts to bound debate had important consequences within an adversarial trial setting where it was left to the parties to reveal the deficiencies of each others' scripts, if and when they could. More specifically, it constrained the agency of objectors in attempting to establish and defend the credibility of their arguments. As Chomsky notes, "If you're critical of received opinion, you have to document every phrase" (1992: 77).

Applicants faced no such obstacles, with their preferred approaches to harm reduction widely propagated and legitimized by Central Government. This rule applied regardless of the fact that many of the Government's proposed solutions had been identified in independent reviews of the international evaluation literature as the least effective public policy responses to alcohol-related harm. In a context in which broader sources of empirical evidence were often suppressed, crime reduction practitioners had developed an acute need for robust sources of local-level data and expert assistance in countering the official discourse of a state-industry nexus. It was possession of this 'guilty knowledge' that underpinned my field role and market value as a consultant and expert witness.

Chapter 9 focused upon the trial itself, a contest waged on a day (or several days) in court, with far-reaching implications for the parties. Trials were formal, ritualistic and hierarchical social occasions organized and directed by legal professionals, and in particular, by barristers. Witnesses were the fodder of the adversarial process, vehicles through which a preordained script might be delivered. The realities constructed in

preparation of the script were validated and brought to life through the testimony of witnesses and remoulded in the exchanges between witness and lawyer. Witnesses, and especially expert witnesses, worked as members of a team in collaboration with counsel and other legal professionals. Counsel sought to accomplish a cohesive team impression through strategic interaction, engineering an artificial fit between what had been prepared and what was presented. Team members were expected to display loyalty by defending the script at all times. Counsel worked closely with their witnesses, each individual straining to process disparate information and present it within an appropriate interpretative frame.

In addition to the strategic manipulation of content, effective engagement in the adversarial trial also required attention to the *form* in which evidence was delivered. Cross-examination was identified as the key weapon of adversarial duelling involving a struggle between advocate and witness over impressions of credibility and persuasiveness. Experienced protagonists paid close attention to the presentation of self and to mastery of the art of rhetoric. Important distinctions were drawn between 'court rats' and 'real people.' These broad categorizations were used to classify participants in relation to their degree of familiarity with the courts and legalistic forms of interaction. Both witnesses and counsel had differential resources, skills and capacities which enabled and constrained their attempts to accomplish individual and team credibility. These factors served to impact upon oral and bodily performance and the manner in which evidence was both delivered and received.

The adversarial trial had a profound effect upon the experience of lay witnesses. Public speaking under oath in a strange, formal and antagonistic social setting could be disconcerting, even terrifying. The occupational culture of legal professionals fostered an indifference to the welfare of their opponents, encouraging advocates to employ language strategically in order to denounce and coerce. Once witnesses took to the stand they often faced a gruelling cross-examination, sometimes lasting over two hours. Yet, witnesses were required to exercise emotional restraint, measuring their responses and maintaining poise without interactional support. Cross-examination did not conform to the taken-for-granted norms of conversation or argumentation; it was a language game in which the

rules were loaded in favour of the interrogator who controlled the selection, sequencing and juxtaposition of topics and their relative emphasis. Witnesses often found their words cut short as counsel sought to restrict the submission of embellished or narrative testimony. Many witnesses were proactive in using defensive strategies to anticipate and disrupt the course of counsel's questioning. However, cross-examination provided the questioner with systematic opportunities to manipulate the sequential and syntactical structure of interaction to their own advantage, placing less proficient language users, and indeed all inexperienced lay people, at a significant disadvantage.

Licensing teams were dominated by 'expert' witnesses. Application teams relied most upon their services, some calling as many as fifteen for each trial. Experts made exalted claims to knowledge and had usually developed a range of linguistic and para-linguistic skills with which to enhance their communicative performance. These skills had been honed by repeated exposure to the adversarial system and nurtured through the application of pre-existent resources derived from social status. Trial experience afforded experts the ability to anticipate possible challenges and draw upon a pool of well-rehearsed defensive routines. Experts were often impressive witnesses who had learned to combine personal presentation skills with a barrage of carefully crafted and ostensibly reasonable arguments. They were also notably loyal, disciplined and confident team players who could manage their emotions as part of a broader capacity for reflexive self-monitoring. The systematic pressures and professional mores of a market-driven adversarial system militated against the submission of impartial testimony by experts. Experts had a clear financial incentive to please counsel by providing a partisan service. In a trial setting it was usually taken for granted by participants that opposing witnesses would hold firmly entrenched views and display allegiance to their team. The combined skills, sensibilities and loyalties of experts allowed them to become counsel's most effective partners.

Similar issues arose in relation to the professional competencies of counsel: their depth of specialist knowledge, mastery of the brief, confidence and persistence in cross-examination, and the eloquence and creativity of their submissions. Licensing trials emerged primarily as gladiatorial struggles between partisan teams of professionals. The

asymmetrical distribution of professional ability amongst opponents correlated with both the inequitable financial resources of the parties and, more often than not, with the verdict of each case. Representation by elite specialist counsel was assigned by wealth and connections, advantages which almost invariably favoured the applicant. Trade teams benefited not only from the most accomplished and vociferous counsel, but also from the ability to call upon the largest army of loyal and experienced experts, acting, effectively, as mercenaries to the cause.

The testimony of objectors, and in particular *lay* objectors, often appeared less persuasive than that of their opponents, simply by virtue of the manner in which it was presented. The ability to persuade operated quite independently of the validity or truthfulness of what was said. At trial, the presentation of objection scripts was compromised by extrinsic conditions of action. This occurred in three ways: Firstly, at the level of experience and social membership status; the exalted knowledge claims and polished performances of the expert serving to de-legitimize the 'anecdotal' evidence and/or performative naivety of the lay person/practitioner; Secondly, through the application of asymmetrical resources. The holders of economic power were able to secure the services of specialist legal teams who had developed fine-tuned techniques for strategically manipulating features of the adversarial system, including the preparation of scripts and the organization of talk in trial settings; and thirdly, at the level of content; credibility could be accomplished more easily if one's script conformed with, or directly appealed to, dominant ideology. As demonstrated in Chapter 8, free market ideals were threaded through the arguments-in-chief of applicants and their counsel's cross-examination of objectors. Moreover, application scripts espoused simple individualized explanations of crime which were easily understood by, and appealed to the prejudices of, a lay audience. Such explanations were legitimized by their salience as foundational assumptions of Central Government alcohol policy and as the basis of popular media reports. This cluster of sentiments, beliefs, capacities and resources impacted upon trial discourse by serving to artificially enhance the persuasive power and credibility of trade arguments to the detriment of objectors.

Regulatory Capture and the Local Governance of Crime

"Men are free to make history, but some men are much freer than others. Such freedom requires access to the means of decisions and of power" (Wright Mills, 1970: 201)

When summarizing the new legislation in Chapter 1, I noted that licensing authorities were required to grant all premise licence applications where no objection had been received. In introducing this rule, Central Government had sought to restrict the power of local administrative bodies at the very time when many had intended to adopt a more cautious approach to licensing. When drawing up their licensing policies, around 40 per cent of councils had identified certain areas as 'saturated' with licensed premises (Harrington and Halstead, 2004). In these locations, local authorities were seeking to impose a 'policy presumption' against the granting of new licenses where it was felt that the development of additional premises might compromise the crime preventative objectives of the Act. However, with the 'must grant' requirement in place, such policies could not take effect unless and until objections were received from an external source. The Act therefore removed the ability of licensing authorities to engage in the strategic governance of crime. The onus was placed upon local residents and 'responsible authorities' such as the police and environmental health services to carefully scrutinize every licence application. In order to make representations, objectors would clearly have needed to be adequately resourced and to have developed some degree of expertise. Yet, as discussed below, the Government chose to ignore such practical matters and made no additional provisions for objectors which might enable them to exercise their legal rights.

The ambiguous wording of the Guidance also increased the likelihood that, in seeking to defend their saturation policies, licensing authorities would become embroiled in protracted litigation, culminating in Judicial Review. Judicial Review proceedings provided the leisure industry with the means to directly attack the policies of a licensing authority. In order to protect their policies from legal destruction, authorities needed to ensure that policy statements were very carefully drafted and applied. The Administrative Court would expect to find clear empirical justification in the form of well-researched evidence of the special circumstances pertaining in the area or areas to which the policy

related. Of course, Judicial Review also provided a mechanism through which the authority might seek to refine the drafting of its policy in order to render it more legally robust. With the official mandates that govern licensing in the post-reform era framed in such a way as to allow for variations and different interpretations, Statements of Licensing Policy are set to become the fodder of the higher courts. This can only lead to the emergence of Judicial Review as the most potent weapon in the contestation of the night.

As noted in Chapter 7, the *threat* of court action cast a long shadow, with litigation and its financial, personal and organizational consequences acting as a spur to concession and capitulation that was felt most sharply by objectors. The looming threat of litigation even constrained the actions of licensing authorities. In Bath, for example, councillors cited the fear of Judicial Review as a primary reason for rejecting the introduction of a saturation policy, despite receiving robust submissions regarding its necessity from the police, residents' groups, and even local licensees. Licensing committee members argued that their policy, and the policies of other smaller city authorities, would be seen as soft targets by the industry's legal teams, with the ensuing victories then employed as precedents with which to attack 'bigger fish' such as the City of Westminster.

The trials in which I participated were not about truth or falsity, but rather, about winning or losing. More specifically, they concerned whose subjectivity, the applicant's or the objector's was judged to be the objectivity of the matter. In Chapter 9, I discussed how trials were something of a gamble for both parties as they involved the intentional deployment of a range of skills, resources and capacities in interaction. The practical successes of trade teams arose by dint of their success at persuasion and a seasoned ability to denounce the arguments of their opponents. These interactional accomplishments combined with the threat of litigation and the close affinities with government policy to create a situation of "regulatory capture" (see Bakan, 2004: 152) wherein trade interests were enmeshed in multiplex relationships of power. When the corporations came to town, effective opposition was rare. Applicants won around 80% of the cases in which I was involved. To pursue a sporting analogy, although home teams scored the occasional 'giant killing' victory, away teams dominated the game by dint of

their greater financial resources, better and more expensive players, and the power and influence of their support structures. These asymmetries - individualized by liberal commentators as no more than inevitable quirks of a healthily functioning legal system - served to skew notions of natural justice.

Classic studies of the criminal courts (Blumberg, 1967; Carlen, 1976; Emerson, 1969; Sudnow, 1965) spoke to the way in which courtroom interaction highlighted the fiction that defendants and State prosecutors stood as equal adversaries before the law. So, in the licensing trial, one now finds a similarly "institutionalized technology of semiotic and verbal coercion" (Carlen, ibid: 98) directed at local public sector agencies and their constituencies in attempting to resist imposition of the corporate will. The non-interventionist ethos of neo-liberal governance militates against the restriction of business development in all but the must dire of circumstances. Whilst the State seeks to punish, in the name of social order, those individuals who exploit criminal opportunities, it continues to actively serve and protect the interests of those corporations whose modes of operation generate such opportunities in the first place. Central Government's curious decision to tie the hands of licensing authorities with regard to implementation of their own crime prevention policies is but one visible manifestation of the ways in which the interests of the regulated have come to dominate modes of regulation which ostensibly exist to serve the public interest.

The Democratic Deficit

"In a way, they seemed to be conducting the case independently of me. Things were happening without me even intervening. My fate was being decided without anyone asking my opinion" (*Meursault*, Camus, 1982: 95)

The Government claims that people living in the vicinity of licensed premises are protected by their ability to make representations. The Act bestows the right to call for a licence to be reviewed if premises are considered to be causing a nuisance and to object to applications for new licences. But will objectors and operators compete as equals before the law? Will lay objectors get their 'day-in-court' in any meaningful sense?, or

will the development of our urban centres continue to be determined by lawyers rather than by democratically accountable public bodies?

It seems inevitable that applicants, especially if they are large companies, will continue to muster substantial resources in presenting their case. Corporations will once again utilize specialist barristers and commission the services of expert mercenaries. Moreover, public sector agencies, and the citizens in whose name they act, will still be required to defend their views in the face of strident opposition. Little will have changed if the new appeal mechanism continues to provide industry with a forum for pursuing its interests through capture of the regulatory process.

If weight is truly to be attached to the views of residents (in particular), their case will need to be robustly presented and defended before the licensing authority and the courts. I noted in Chapter 7 how lay objectors faced a number of practical barriers to participation in the regulatory process. These included the day-time scheduling of hearings, the complexities of the process, the expense of legal representation, the risk of incurring 'costs' claims, the sheer volume of applications in some areas, and the need to provide an 'evidentiary basis' with which to back up their complaints. These obstacles will remain. Moreover, the intimidating nature of the trial - as discussed in Chapter 9 – may continue to deter many objectors, even those who have expressed their views very clearly in correspondence with local authorities or the police. Those who do attend court may be discouraged from returning as a result of the treatment they receive from lawyers. Cross-examination, in particular, can often be experienced as a "form of punishment" (Danet and Bogoch, 1980: 59), "ordeal" (Rock, 1993: 86), "or "degradation" (Garfinkel, 1956) that many potential witnesses, both lay persons and uninitiated experts, understandably seek to avoid. Chapter 9 also indicated how lay witnesses can find themselves virtually outside the realm of critical evidence-giving. The testimony of experts and other professionals is often given precedence, as the court concerns itself with detailed exposition of 'scientific' evidence, most of which is actually partisan, and - due to the financial disparities which influence the calling of expert witnesses - pitched in favour of the applicant (see Goff, 1995).

Unless and until such issues are addressed, licensing trials will remain highly unequal contests. Embroilment in protracted litigation will continue to penalize lay people for attempting to participate in a decision-making process of direct import to their own quality of life. In all likelihood, many residents will feel that they are effectively excluded from the process altogether. For as long as such circumstances pertain, there will be a democratic deficit at the heart of the contestation of the night.

There is an urgent need to create conditions of choice, participation and self-direction for objectors. Such conditions can only be achieved by making the licensing process more democratic, wherein democracy is conceived of "as a process that connects 'the people' and the powerful, and through which people are able significantly to influence their actions" (Young, 2000: 173). Democratic governance of the night would require the adoption of a procedural conception of justice in which "maximum public participation can be viewed as a necessary component of the democratic legitimacy of decision-making processes" (Loader, 1994: 531).

These conclusions raise the question of what can be done to broaden opportunity of access to the licensing system. The formal right to make representations is of little use to residents unless they have access to sources of technical assistance and financial support. At the very least, this would require the provision of some form of free and independent advisory service, together with a 'legal aid' scheme which might be administered by the local authority and financed from the licence fees. Of course, even this type of assistance would do little to assuage the ordeal of delivering live oral testimony; the adversarial nature of the appeal mechanism itself serving to perpetuate many existing problems. In the following paragraphs I highlight basic flaws of the adversarial system, which, I argue, render it unsuited to the determination of licensing matters. I then go on to outline basic tenets of an alternative system of adjudication.

Towards an Alternative System of Adjudication

"People with power are going to defend themselves" (Chomsky, 1992: 137)

In *The Origins of Adversary Criminal Trial*, the Legal Historian John Langbein demonstrates how the adversarial system was never "premised on a coherent theory of truth-seeking" (2003: 333), but rather promoted "the deeply problematic assumption that combat promotes truth, or put differently, that truth will emerge even though the court takes no steps to seek it" (ibid: 338). This point is not lost on more conservative scholars such as Devlin (1979: 62) who, whilst supporting the orthodox view that the search for evidence by two opposing parties will "discover all that is relevant for and against," candidly admits that "this is not the same as saying that it will all be presented at the trial."

Supporters of the adversarial system offer a romantic appraisal of combative advocacy as vital to democracy, the rule of law, protection of liberty, and freedom of expression. These ideals are regarded as "an essential morality" that justifies adversarial practice and "excuses its excesses" (Pannick, 1992: 10; 148-9). The advocate is portrayed as a valiant defender of the "principle that there is always another point of view, a different perspective, a contrary argument, of which account should be taken before judgement is delivered" (ibid: 10). This principle is regarded as inviolable, providing lawyers with a justifiable incentive "to suppress and distort unfavourable evidence, however truthful it may be" (Langbein, ibid: 103-4). As discussed in Chapter 8, in licensing trials each party presents what is essentially a body of half-truths reconstituted in such a way as to appear credible and persuasive. In exerting tight control over the information available to the courts, editing and moulding the evidence as they see fit, lawyers obliterate all semblance to the disinterested pursuit of knowledge. Trials are "conceived not as an inquiry into the final truth of a matter but as a struggle," quite literally, a '"trial of strength,' between two competing, partial and incomplete cases" (Rock, 1993: 31, with citation from Devlin, 1979: 54). Counsel is under no obligation to reveal the confidences of her client, or any information that might assist her opponent's case. As Langbein, (ibid: 332) notes, "adversary procedure entrusts the responsibility for gathering and presenting the evidence

upon which accurate adjudication depends to partisans whose interest is in winning, not in truth." In laying their "tales and tale-bearers" before the court, advocates merely offer "a choice of different constructions" (Rock, ibid: 35). Similarly, the bench itself has no fact-finding role and plays no part in investigating the issues it is tasked to decide. As Egglestone (1978: 2) notes: "The judge (sic) does not ascertain the truth in any real sense. What he does is to give a decision on the evidence presented to him."

The Act identifies crime prevention as a primary objective of the licensing system. A central tenet of contemporary crime prevention policy is that decision-making should be *evidence-based*, that is, that it should reflect and respond to empirical knowledge of its subject matter (Hough and Tilley, 1998; Pease, 2002). Empirical evidence is clearly preferable to partisan rhetoric as a basis for what are, essentially, strategic public policy decisions. Yet, one of the central failings of the adversarial system - at least, as it is applied to licensing - is that the bench assumes no responsibility for fact-finding, acting rather as a mere arbiter of conflict and assessor of persuasiveness.

How might appeals be conducted in such a way as to promote rigorous empiricism, assuage the democratic deficit and conform to principles of natural justice? Clearly, licensing appeals must be determined efficiently in accordance with basic rules of administrative procedure. This requires that some degree of rule-bound formality will always be necessary (Atkinson and Drew, 1979). Notwithstanding these prerequisites, cross-cultural comparison offers some insight into alternative methods of adjudication. Legal scholars (for example, Devlin, 1979; Egglestone, 1975; Ellison, 2001; Langbein, Op cit) have long noted how the civil law jurisdictions of Continental Europe produce more sound findings of fact than our own common law system. As Egglestone (1975: 430) notes:

"Some countries take the view that it is morally necessary that the State should concern itself not only with the decision of a case according to the evidence, but with arriving at a right decision even if the parties themselves do not choose to place the relevant material before the court...the court is considered to have a responsibility to see that the case is thoroughly investigated...can order the hearing of witnesses, or the production of

documents by a party or third party, can direct a report by experts or an on-the-spot investigation."

In this 'inquisitorial' mode, therefore, the court is involved in proactive fact-finding and vested with the authority and necessary resources to perform the task of investigation. Unlike the adversarial bench, who, at the start of the trial, remain largely ignorant of the substance of each case, the bench might be comprised of specialist investigatory magistrates working from a dossier encapsulating the findings of their own pre-trial investigation. The determination of regulatory appeals by state-appointed experts has clear precedent in the role of the Planning Inspectorate. Proceedings would be regarded as an attempt by the court to get at the truth, with the lawyers on each side required to assist the investigator in obtaining the best available evidence. Robust local level data would, of course, need to be gathered by stakeholder agencies (see Elvins and Hadfield, 2003; Hadfield and Elvins, 2003) from which the investigators might then draw their own inferences.

At trial, witnesses would be called and questioned by the inquisitors acting in accordance with their fact-finding agenda, rather than by advocates seeking to promote a particular cause. As impartial adjudicators, the examining magistrates would have little incentive to browbeat, humiliate or intimidate witnesses, misrepresent the meaning of their words, or steer questioning for partisan reasons, suppressing certain matters whilst emphasizing others. Under the inquisitorial system, witnesses would be afforded greater opportunity to communicate their own concerns in a narrative form more akin to natural conversation. This form of hearing would aim to prevent the domination of proceedings by lawyers and other partisan professionals and encourage greater participation by lay people. More generally, the adoption of an inquisitorial approach may help to remove some of the systematic skews which advantage corporate interests in the contestation of the night. In an era in which the market ethos has attained an almost hegemonic status, it can easily be forgotten that the effective restraint of commercial ambitions is a prerequisite for the survival of vibrant and humane cities.

Postscript

Lighting the Shadows: Suggestions for Future Research

A dark fog of ignorance continues to envelop the night-time city and the forces that shape it. This thesis sheds no more than a few faint glimmers of additional illumination. The following paragraphs point to various limitations of the study and indicate possibilities for future research:

Omissions

1. The most profound limitations of this study arise in relation to the restricted range of themes explored and the omission of various stakeholder groups. Chapter 6 alluded to ways in which divergent forms of 'practical consciousness' may underpin people's experiences of the night-time social world and their conceptualization and management of environmental risk. Further research in this area would be of immense value in developing our understandings of contestation. For example, Part II addressed issues of social control and public sociability in the night-time high street. This analysis would be significantly enhanced by conducting further research with *consumers* in order to gain a deeper appreciation of the meanings they attach to their leisure experiences.

2. In exploring social interaction within a trial setting, Part III of this thesis relied upon my own observations and experiences as a participant, together with informal interviews with stakeholders. In order to dig more deeply into the notion of adversarial proceedings as a 'trial of strength' it would be useful to conduct more lengthy and formal interviews with protagonists and to organize focus groups. To this end, informants would be invited to express their views and narrate experiences of the trial process in their own words. Moreover, a fine-grained analysis of transcript data may assist in exploring more deeply the various linguistic devices which protagonists employ during cross-examination.

3. Chapters 4 and 7 explored the issue of bargaining between regulators and the regulated in an attempt to achieve the out-of-court settlement of licensing disputes. An important theme of contestation that was omitted from this discussion was that of the enforcement of licensing law. Enforcement activity may be conceived as, in many respects, quite distinct from licensing itself. Further research is needed to explore the extent to which, it too, may involve processes of negotiation, compromise and subterfuge, sometimes culminating in litigation.

Emergent Themes

1. Research on the NTE as a *routine working environment* would be especially apposite in the current regulatory context as the impending extension of opening hours will undoubtedly influence the duration and conditions of employment for those who service the night-time city. Although this study has provided some partial insight into the experiences of those who work within licensed premises and police the streets, contested usage of the night by other occupational groups such as taxi drivers, fast-food workers, accident and emergency staff, paramedics, traffic wardens and street cleaners has remained obscure. One way to explore these issues would be to interview these frontline operatives and observe them at work. Focus group techniques may be used to provide further appreciative insight. Categories of nightworker are, of course, heterogeneous and researchers would need to be attuned to their informants' multifarious subjectivities as shaped by aspects of gender, age, race, ethnicity, social class and sexuality. Moreover, it may be the case that the meanings individuals attach to nightwork are influenced by other variables such as frequency of participation and their location within certain social and occupational networks. In relation to issues of safety, risk, control and regulation, it would be interesting to trace the contours of congruent and divergent opinion within and between stakeholder groups.

2. In Chapter 5, I explored the issue of social control within licensed premises. In this analysis, venue admissions policies were revealed as important, although far from panacean. However, data emerging from this study has indicated that the process of selecting and processing customers on entry may be more complex than previous

discussions (Hadfield and contributors, 2005a; Hobbs et al., 2003; McVeigh, 1997; Monaghan, 2002a) have portrayed. A detailed micro-sociological study of the processes of negotiation and discrimination occurring in the course of interaction between the controllers and the controlled may prove especially apposite in revealing further elements of contestation.

3. The night-time high street in Britain *appears* to be dominated by a 'mainstream' consumer group comprising young, white, heterosexuals of a generally working class or lower-middle class socio-economic profile. A limited amount of data exists to support these assumptions to the extent that they correlate with the characteristics of criminal offenders and victims. However, wide-ranging social survey work needs to be conducted in order to more accurately chart this market's evolving demography.

4. Informed opinion would suggest that the social and commercial constitution of the contemporary British high street may be in many ways unique (Babor, 2004; Room, 2004). However, in order to test this hypothesis it would be necessary to conduct cross-cultural comparisons with central urban entertainment zones in other countries. It may be particularly illuminating to explore the effects of different approaches to regulatory matters such as the closing time and spatial density of premises; commercial issues such as diversity of entertainment offer and drinks pricing policies; and to provide ethnographic accounts of cultural differences in relation to crowd constitution, behaviour and drinking practices.

Appendix A

"Price Discounts 'Out of Control' in Birmingham"

Discounting is often associated with particular trading periods ('happy hours') that might, in fact, last for several hours or an entire evening. The 'happy hour' concept "originated in the United States, and was introduced initially as a way of boosting trade in the traditionally quiet early evening period" (BBPA, (2002: 5). Happy hours are now often used to encourage additional custom during early evening and mid-week trading periods. In most major towns and cities it is possible to drink at significantly reduced prices for most of the night – 'surfing the happy hour' as it is known. In the following article, published in the trade newspaper *The Morning Advertiser*, journalist Claire Hu describes the situation in England's second city:

'Licensees in Birmingham believe price discounting is spiralling out of control and leading to a 'dumbing down' of the city's pub scene. Two of the last remaining private licensees on Broad Street, where millions have been spent on regenerating the leisure economy in the past few years, say ludicrous booze offers are giving the trade a bad name and sucking the lifeblood from the industry. They say that efforts by the Licensees on Broad Street Traders Association (LOBSTA) to talk to the chains about responsible pricing have met with a wall of indifference.

This comes as ambulance chiefs in Birmingham this week blamed binge drinking during the heatwave for a surge in emergency call-outs. Paramedics dealt with 35,000 emergency cases in July - the highest since records began-and also witnessed a dramatic increase in alcohol-related assaults. Clive Ritchie, licensee of *The Brasshouse* in Broad Street and chairman of LOBSTA said 'We don't want £1-a-pint customers. If you sell it for that, you get what you deserve.' Allan Sartori, vice-chairman of LOBSTA and operator of a table-dancing club, said: "There are only three privately-owned venues left down Broad Street. The ridiculous price discounting has got out of control and skims the fat off for everyone. The trade is being dumbed-down and mediocrity rules. They are

selling shots of tequila for 50p and this inevitably causes fighting on the streets. We have tried to talk to police and licensees, but these corporations have too many lawyers and you can never get anywhere." He said the high street chains were run by "accountants" who had very little understanding of the business and hired inexperienced managers who were pressurized into lowering prices to increase turnover, rather than improving their offer."

Urbium Plc has closed its *Tiger Tiger* outlet in Broad Street, blaming the 'Ibiza-like' atmosphere that has grown up on the street. *Urbium* opened the 2,000-capacity bar and restaurant in 2000 at a cost of £2m. Managing Director Robert Cohen said: 'The atmosphere of the street has got a lot worse and we admit we've made some mistakes. Over time, our aspirations in the location have been let down as the landscape has changed. The type of product we were providing was not right for Broad Street, which is a more downmarket area and is more like Ibiza than the atmosphere we are looking for." Clive Ritchie said he was not surprised by the closure: "I've always said you can't sustain two 2,000 capacity venues (*First Leisure*'s *The Works*) right next to each other."'

(Hu, 2003)

Appendix B

Glossary of Terms

ACPO	Association of Chief Police Officers
ACTM	Association of Town Centre Managers
AED	Accident and Emergency Department
Act	Licensing Act 2003
BBPA	British Beer and Pub Association
BEDA	Bar Entertainment and Dance Association
DJ	Disc Jockey
GMP	Greater Manchester Police
Guidance	Guidance Issued under Section 182 of the Act
IAS	Institute of Alcohol Studies
LGA	Local Government Association
PEL	Public Entertainment Licence
Section 77	Section 77 of the Licensing Act 1964
SHC	Special Hours Certificate

Bibliography

Academy of Medical Sciences (2004) *Calling Time: The Nation's Drinking as a Major Health Issue, London: Academy of Medical Sciences.* http://www.acmedsci.ac.uk/p_callingtime.pdf

Alchian, A. (1977) 'Uncertainty, Evolution and Economic Theory,' in A. Alchian (ed.) *Economic Forces at Work*, Indianapolis, IN: Liberty Press.

Alcohol Alert (2002) *Licensing Bill: Government Betrays Local Communities*, IAS: London.

Alcohol Alert (2003) *Alcohol Strategy Questioned*, Issue 3, IAS: London.

Alcohol Harm Reduction Group (2003) *No Half-Measures*, London: Alcohol Harm Reduction Group.

Allen, J. (2003a) 'On the Case: The Licensing Landscape,' *Night*, October: 12.

Allen, J. (2003b) 'On the Case: The Licensing Bill ...Continued,' *Night*, May: 14.

Allen, J. (2004) 'On the Case: Court of Appeal Rules OK!' *Night*, May: 11.

Alvarez, A. (1995) *Night: An Exploration of Nightlife, Night Language, Sleep and Dreams*, London: Jonathan Cape.

Amin, A. and Thrift, N. (2002) *Cities: Reimagining the Urban*, Cambridge: Polity.

Anderson, L. and Snow, D. (2001) 'Inequality and the Self: Exploring Connections from an Interactionist Perspective,' *Symbolic Interaction*, 24/4: 395-406.

Armstrong, G. (1993) 'Like that Desmond Morris?' in D. Hobbs and T. May (eds.) *Interpreting the Field: Accounts of Ethnography*, Oxford: Clarendon Press.

Atkinson, J. (1982) 'Understanding Formality: the Categorization and Production of 'Formal' Interaction,' *British Journal of Sociology*, 33/1: 86-117.

Atkinson, J. and Drew, P. (1979) *Order in Court: The Organization of Verbal Interaction in Judicial Settings*, London: Macmillan.

Aubert, V. and White, H. (1959) 'Sleep: A Sociological Interpretation II,' *Acta Sociologica*, IV/3, 1-16.

Augé, M. (1995) *Non-Places: Introduction to an Anthropology of Supermodernity*, London: Verso.

Ayres, I. and Braithwaite, J. (1992) *Responsive Regulation: Transcending the Deregulation Debate*, Oxford: Oxford University Press.

Babor, T. (2004) 'Alcohol Policy Research: A Quoi Bon?' *Addiction*, 99: 1091-1092.

Babor, T. et al., (2003) *Alcohol: No Ordinary Commodity: Research and Public Policy*, Oxford: Oxford University Press.

Bailey, F. and Rothblatt, H. (1971) *Successful Techniques for Criminal Trials*, Rochester, NY: The Lawyer's Co-operative Publishing Co.

Baird, M. (2000a) 'Management Quality and Training,' *Night*, February: 80-1.

Baird, M. (2000b) 'Cost Effective Management and Training,' *Night*, March: 80.

Bakan, J. (2004) *The Corporation: The Pathological Pursuit of Profit and Power*, London: Constable.

Baker Associates (2001) *Review of the Use Classes Order and Part 4 of the GPDO (Temporary Uses)*, London: DTLR (Department for Transport, Local Government and the Regions).

Baldwin, J. (2000) 'Research on the Criminal Courts' in R. King and E. Wincup (eds.) *Doing Research on Crime and Justice*, Oxford: Oxford University Press.

Baldwin, J. and McConville, M. (1977) *Negotiated Justice*, London: Martin Robertson.

Barker, R. (1968) *Ecological Psychology*, Stanford CA: Stanford University Press.

Barnes, J. (1994) *A Pack of Lies: Towards a Sociology of Lying*, Cambridge: Cambridge University Press.

Barr, R. and Pease, K. (1992) 'A Place for Every Crime and Every Crime in its Place,' in D. J. Evans, N. R. Fyfe and D. T. Herbert (Eds.) *Crime, Policing and Place: Essays in Environmental Criminology*: 196- 216, London: Routledge.

Barry, N. (1991) 'Understanding the Market,' in M. Loney et al., eds. *The State or the Market: Politics and Welfare in Contemporary Britain*, London: Sage.

BBC News (2002) 'Drink Crime Data 'Meaningless,' 4 March, wysiwyg://31/http://news.bbc.co.uk/hi/English/uk/newsid_1852000/1852276.sti

BBPA (British Beer and Pub Association) (2002) *Point of Sale Promotions: A Good Practice Guide for Pub Owners and Licensees*, London: BBPA.

Beck, A. and Willis, A. (1995) *Crime and Security: Managing the Risk to Safe Shopping*, Leicester: Perpetuity Press.

Becker, H. (1958) 'Problems of Inference and Proof in Participant Observation,' *American Sociological Review*, 23: 652-60.

Becker, H. (1963) *Outsiders: Studies in the Sociology of Deviance*, New York: The Free Press.

Becker, H. (1967) 'Whose Side Are We On?,' *Social Problems*, 14 (Winter): 239-247.

Bell, C. and Newby, H. (1977) 'Introduction: The Rise of Methodological Pluralism,' in C. Bell and H. Newby (eds.) *Doing Sociological Research*, London: Allen and Unwin.

Bellan, R. (1971) *The Evolving City*, New York: Pitman.

Bennett, M. (1999) 'The Naming and Shaming Game,' *Alcohol Concern Magazine*, Spring, 14/2: 10-11.

Bennett, W. and Feldman, M. (1981) *Reconstructing Reality in the Courtroom*, New Brunswick: Rutgers University Press.

Berkley, B. and Thayer, J. (2000) 'Policing Entertainment Districts,' *Policing: An International Journal of Police Strategies and Management*, 23/4: 466-491.

Berkowitz, L. (1978) 'Is Criminal Violence Normative Behaviour? Hostile and Instrumental Aggression in Violent Incidents,' *Journal of Research in Crime and Delinquency*, 15: 148-161.

Berman, M. (1982) *All That Is Solid Melts Into Air*, London: Verso.

Berman, M. (1986) 'Taking it to the Streets,' *Dissent*, Fall, 476-485.

Better Regulation Task Force, (1998) *Review of Licensing Legislation*, London: Central Office of Information.

Bianchini, F. (1995) 'Night Cultures, Night Economies,' *Planning Practice and Research*, 10/2: 121-126.

Bianchini, F. and Schwengel, H. (1991) 'Re-imaging the City,' in J. Corner and S. Harvey (eds.) *Enterprise and Heritage*, London: Routledge.

Blumberg, A. (1967) 'The Practice of Law as a Confidence Game,' *Law and Society Review*, 1: 25-47.

Blumer, H. (1969) 'What's Wrong with Social Theory?' in H. Blumer, *Symbolic Interactionism*, Englewood Cliffs, N.J.: Prentice-Hall.

Bok, S. (1978) *Lying: Moral Choice in Public and Private Life*, New York: Pantheon Books.

Bolam, M. (2003) 'Another Blow for Pub Battle Losers,' *The Journal*, 3 December: 2.

Bottoms, A. and McLean, J. (1976) *Defendants in the Criminal Process*, London: Routledge and Kegan Paul.

Bottoms, A. and Wiles, P. (2002) 'Environmental Criminology' in M. Maguire, R. Morgan and R. Reiner (eds.) *The Oxford Handbook of Criminology*, Third edition, Oxford: Oxford University Press.

Bourdieu, P. (1977) *Outline of a Theory of Practice*, Cambridge: Cambridge University Press.

Boyd, G. (2001) 'Legitimizing the Illicit- Dublin's Temple Bar and the Monto' paper presented at *Night and the City Conference*, Montreal, March.

Brain, K. (2000) *Youth, Alcohol and the Emergence of the Post-modern Alcohol Order*, Occasional Paper No. 1, London: IAS.

Branaman, A. (1997) 'Goffman's Social Theory' in C. Lemert and A. Branaman (eds.) *The Goffman Reader*, Oxford: Blackwell.

Branaman, A. (2003) 'Interaction and Hierarchy in Everyday Life: Goffman and Beyond' in A. Treviño (ed.) *Goffman's Legacy*, Oxford: Rowman & Littlefield.

Brannigan, A. and Lynch, M. (1987) 'On Bearing False Witness: Credibility as an Interactional Accomplishment' *Journal of Contemporary Ethnography*, 16/2: 115-146.

Brantingham, P. L. and Brantingham, P. J. (1993) 'Nodes, Paths and Edges: Considerations of the Complexity of Crime and the Physical Environment,' *Journal of Environmental Psychology*, 13: 3-28.

Brantingham, P. L. and Brantingham, P. J. (1995) 'Criminality of Place: Crime Generators and Crime Attractors,' *European Journal of Criminal Policy and* Research, 3: 5-26.

Bromley, R. and Nelson, A., (2002) 'Alcohol-Related Crime and Disorder Across Urban Space and Time: Evidence from a British City,' *Geoforum*, 33: 239-254.

Bromley, R., Thomas, C. and Millie, A. (2000) 'Exploring Safety Concerns in the Night-time City,' *Town Planning Review*, 71: 71-96.

Brophy, I. (2003) 'Witness Statement of PC Ian Brophy' in Chief Constable of Nottinghamshire v Clegg (Springwood Leisure Plc) Nottingham Crown Court, February.

Brown, S. (1991) *Magistrates at Work: Sentencing and Social Structure*, Milton Keynes: Open University Press.

Budd, T. (2003) *Alcohol-Related Assault: Findings from the British Crime Survey*, Home Office Online Report 35/03.

Burgess, E. (1932) 'Introduction' in P. Cressey *The Taxi-Dance Hall: A Sociological Study in Commercialized Recreation and City Life*, Chicago: University of Chicago Press.

Burke, T. (1915) *Nights in Town: A London Autobiography*, London: George Allen and Unwin.

Burke, T. (1941) *English Night-Life: From Norman Curfew to Present Black-Out*, London: Batsford.

Burns, T. (1980) 'Getting Rowdy with the Boys,' *Journal of Drug Issues*, 10: 273-286.

Calvey, D. (2000) 'Getting on the Door and Staying There' in G. Lee-Treweek and S. Linkogle (eds.) *Danger in the Field: Risk and Ethics in Social Research*, London: Routledge.

Camus, A. (1982) [1942] *The Outsider*, trans. J. Laredo, London: Penguin.

Carey, J. (1997) 'Recreational Drug Wars, Alcohol Versus Ecstasy' in N. Saunders, (ed.) *Ecstasy Reconsidered*, London: Saunders.

Carlen, P. (1976) *Magistrates' Justice*, London: Martin Robertson.

Carr, N. (1998) 'Gendered Differences in Young Tourist's Leisure Spaces and Times,' *Journal of Youth Studies*, 1/3: 279-293.

Carr, S., Francis, M., Rivlin, L. G. and Stone, A. M. (1992) *Public Space*, Cambridge: Cambridge University Press.

Casswell, S., Fang Zhang, J. and Wyllie, A. (1993) 'The Importance of Amount and Location of Drinking for the Experience of Alcohol-related Problems,' *Addiction*, 88, 1527-1534.

Cavan, S. (1963) 'Interaction in Home Territories' *Berkeley Journal of Sociology*, 5, 17-32.

Cavan, S. (1966) *Liquor License*, Chicago: Aldine.

Central Cities Institute (2002) *Licensing Reform: A Cross-cultural Comparison of Rights, Responsibilities and Regulation*, London: University of Westminster.

Central Westminster Police/Community Consultative Group (1998) *A Good Night Out! Licensing Working Party Report*, London: Westminster City Council.

Charity, P. (2002) 'Martin v Thomas: The Gloves are Off,' *Morning Advertiser*, 10 December, 121: 2.

Charity, P. (2004) 'MA Opinion: Hours not to Reason Why,' *Morning Advertiser*, 15 April, 190: 13.

Chatterton, P., (2002) 'Governing Nightlife: Profit, Fun and Dis(Order) in the Contemporary City,' *Entertainment Law*, 1/2: 23-49.

Chatterton, P. and Hollands, R. (2002) 'Theorising Urban Playscapes: Producing, Regulating and Consuming Youthful Nightlife City Spaces,' *Urban Studies*, 39/1: 95-116.

Chatterton, P. and Hollands, R. (2003) *Urban Nightscapes: Youth Cultures, Pleasure Spaces and Corporate Power*, London: Routledge.

Chikritzhs, T. and Stockwell, T., (2002), 'The Impact of Later Trading Hours for Australian Public Houses (Hotels) on Levels of Violence,' *Journal of Studies on Alcohol*, 63/5: 591-599.

Chomsky, N. (1989) *Necessary Illusions: Thought Control in Democratic Societies*, London: Pluto.

Chomsky, N. (1992) *Chronicles of Dissent/Noam Chomsky; interviews with David Barsamian*, Stirling: AK Press.

Chomsky, N. (2002) *Media Control: The Spectacular Achievements of Propaganda*, 2nd ed., New York: Seven Stories.

Choo, A. (1996) *Hearsay and Confrontation in Criminal Trials*, Oxford: Clarendon Press.

Christopherson, S. (1994) 'The Fortress City: Privatized Spaces, Consumer Citizenship,' in A. Amin (ed.) *Post-Fordism: A Reader*, London: Blackwell.

Cicero, (1971) 'On Duties (II)' in *On the Good Life*, translated and introduced by M. Grant, London: Penguin.

City of Westminster (2002) *City of Westminster Unitary Development Plan (Revised Second Deposit)*, London: City of Westminster.

Clifton, D. (2004) 'Special Attention: A Special Hours Certificate does not give a Licensed Premises the Same Status as a Late-night Venue,' *The Publican*, 905, 3 May: 36.

Clowes, J. (1998) 'Transferring the Burden of Proof on 'Need,' *Licensing Review*, 35, October, 18-20.

Cloyd, J. (1976) 'The Market-Place Bar,' *Urban Life*, 5/3: 293-312.

Collin, M. with contributions by Godfrey, J. (1997) *Altered State: The Story of Ecstasy Culture and Acid House*, London: Serpent's Tail.

Collins, J. (2002) 'Sounds from the Ministries,' *Night*, August: 46.

Colls, R. (2003) 'Same Old Problem...Only Worse,' *SocietyGuardian*, 3 December: 3.

Comedia, (1991) *Out of Hours: A Study of Economic, Social and Cultural Life in Twelve Town Centres in the UK*, London: Comedia.

Conley, J., O'Barr, W. and Lind, E. (1978) 'The Power of Language: Presentational Style in the Courtroom,' *Duke Law Journal*, 78/6: 1375-1399.

Connolly, P. (2003) 'Analysis: Streets that Police Themselves,' *Guardian*, 17 July, p.32.

Connolly, P. (1975) 'The Adversary System – Is it Any Longer Appropriate?' *Australian Law Journal*, 49: 439-442.

Coser, L. (1977) *Masters of Sociological Thought: Ideas in Historical and Social Context*, 2nd ed., NY: Harcourt Brace Jovanovich.

Coupland, A. (ed.) (1997) *Mixed Use Development: Reclaiming the City*, London: Spon.

Crawford, A. (1998) *Crime Prevention and Community Safety, Politics, Policies and Practices*, London: Longmans.

Cressey, P. (1932) *The Taxi-Dance Hall: A Sociological Study in Commercialized Recreation and City Life*, Chicago: University of Chicago Press.

Cresswell, T. (1999) 'Night Discourse: Producing/Consuming Meaning on the Street' in N. Fyfe (ed.) *Images of the Street: Planning, Identity and Control in Public Space*, London: Routledge.

Currie, E. (1997) 'Market, Crime and Community: Toward a Mid-Range Theory of Post-Industrial Violence,' *Theoretical Criminology*, 1/2: 147-172.

Currie, E. (1998) 'Crime and Market Society: Lessons from the United States,' in P. Walton and J. Young (eds.) *The New Criminology Revisited*, London: Macmillan.

Danet, B. and Bogoch, B. (1980) 'Fixed Fight or Free for All?- An Empirical Study of Combativeness in the Adversary System of Justice,' *British Journal of Law and Society*, 7/1: 36-60.

Darbyshire, P. (1984) *The Magistrates' Clerk*, Chichester: Barry Rose.

Davis, M. (1990) *City of Quartz*, London: Verso.

Day, K. (1999) 'Introducing Gender to the Critique of Privatised Public Space,' *Journal of Urban Design*, 4/2: 155-178.

DCMS (Department of Culture, Media and Sport) (2004a) *Licensing Countdown*, September, London: DCMS.

DCMS (Department of Culture, Media and Sport) (2004b) *Guidance Issued under Section 182 of the Licensing Act 2003*, London: DCMS.

DCMS (Department of Culture, Media and Sport), Home Office and ODPM (Office of the Deputy Prime Minister) (2005) *Drinking Responsibly: The Government's Proposals*, London: DCMS, Home Office and ODPM.

Deehan, A. (1999) *Alcohol and Crime: Taking Stock,* Policing and Reducing Crime Unit, Crime Reduction Research Series Paper 3, London: Home Office.

Deehan, A. and Saville, E. (2003) *Calculating the Risk: Recreational Drug Use Among Clubbers in the South East of England*, Home Office Online Report 43/03, London: Home Office Research, Development and Statistics Directorate.

Delafons, J. (1996) 'Too Many Pubs?' *Town and Country Planning*, 65 (December): 346-347.

DeLamotte E. (1990) *Perils of the Night: A Feminist Study of Nineteenth-Century Gothic*, Oxford: Oxford University Press.

DETR (Department of the Environment, Transport and the Regions) (2000) *Our Towns and Cities: The Future. Delivering an Urban Renaissance*, Cm 4911, Urban White Paper, November, London: DETR, The Stationery Office.

Devlin, P. (1979) *The Judge*, Oxford: Oxford University Press.

Dickens, C. (1934) *The Uncommercial Traveller*, London: Chapman and Hall.

Dickens, C. (1977) *Bleak House*, G. Ford and S. Monod (eds.) London: Norton.

Dickens, C. (1996) *Dickens' Journalism: Sketches by Boz and Other Early Papers 1833-39*, M. Slater (ed.) London: Pheonix Giant.

Ditton, J. (2000) 'Crime and the City: Public Attitudes towards Open-Street CCTV in Glasgow,' *British Journal of Criminology*, 40: 692-709.

DoE (Department of the Environment) (1987) *Changes of Use of Buildings and other Land: The Town and Country Planning (Use Classes) Order*, Circular 13/87.

DoE (Department of the Environment) (1996) *Town Centres and Retail Development: Revised Planning Policy Guidance 6*, London: HMSO.

DoE (Department of the Environment) and Welsh Office, (1994) *Planning Out Crime*, Circular 1994/5, London: HMSO.

Dorn, N. (1983) *Alcohol, Youth and the State*, London: Croom Helm.

Douglas, M. (1966) *Purity and Danger*, London: Routledge.

Downes, D. and Rock, P. (2003) *Understanding Deviance*, Fourth Edition, Oxford: Oxford University Press.

DPAS (Drugs Prevention Advisory Service) (2002) *Safer Clubbing: Guidance for Licensing Authorities, Club Managers and Promoters*, London: Home Office DPAS.

Drew, P. (1985) 'Analyzing the Use of Language in Courtroom Interaction,' in T. Van Dijk (ed.) *Handbook of Discourse Analysis – Volume 3: Discourse and Dialogue*, London: Academic Press.

Drew, P. (1990) 'Strategies in the Contest between Lawyer and Witness in Cross-Examination' in J. Levi and A. Walker (eds,) *Language in the Judicial Process*, London: Plenum.

Dubin, S. (1983) 'The Moral Continuum of Deviancy Research: Chicago Sociologists and the Dance Hall' *Urban Life*, 12/1: 75-94.

Du Cann, R. (1964) *The Art of the Advocate*, London: Penguin.

Dyck, N. (1980) 'Booze, Barrooms and Scrapping: Masculinity and Violence in a Western Canadian Town,' *Canadian Journal of Anthropology*, 1: 191-8.

Edwards, G., Anderson, P., Babor, T. et al., (1994) *Alcohol Policy and the Public Good*, Oxford: Oxford University Press.

Edwards, M. (2000) 'Property Markets and the Production of Inequality' in G. Bridge and S. Watson (eds.) *A Companion to the City*, Oxford: Blackwell.

Egglestone, R. (1975) 'What is Wrong with the Adversary System?' *Australian Law Journal*, 49: 428-442.

Egglestone, R. (1978) *Evidence, Proof and Probability*, London: Weidenfeld and Nicolson.

Ekirch, A. Roger, (2001) 'Sleep We Have Lost: Pre-industrial Slumber in the British Isles,' *The American Historical Review*, 106/2: 343-386.

Ekman, P. (1985) *Telling Lies: Clues to Deceit in the Marketplace, Politics and Marriage*, London: Norton.

Ellickson, R. (1996) 'Controlling Chronic Misconduct in City Spaces: Of Panhandlers, Skid Rows, and Public Space Zoning,' *The Yale Law Journal*, 105: 1165-1248.

Ellison, L. (2001) *The Adversarial Process and the Vulnerable Witness*, Oxford: Oxford University Press.

Elvins, M. and Hadfield, P. (2003) *West End 'Stress Area' Night-Time Economy Profiling: A Demonstration Project: Final Report to the City of Westminster*, Available: http://www.westminster.gov.uk/planningandlicensing/licensing/forms.cfm (Last accessed 12 September 2004).

Emerson, R. (1969) *Judging Delinquents: Context and Process in Juvenile Court*, Chicago: Aldine.

Emsley, C. (1996) 'The Origins and Development of the Police,' in E. McLaughlin and J. Muncie (eds.) *Controlling Crime*, London: Sage.

Engineer, R.., Phillips, A., Thompson, J. and Nicholls, J. (2003) *Drunk and Disorderly: A Qualitative Study of Binge Drinking Among 18-24 Year Olds*, Home Office Research Study 262, London: Home Office.

Erenberg, L. (1981) *Steppin' Out: New York Nightlife and the Transformation of American Culture 1890-1930*, Chicago: University of Chicago Press.

Everitt, J. and Bowler, I. (1996) 'Bitter Sweet Conversions: Changing Times for the British Pub,' *Journal of Popular Culture*, 30/2: 101-22.

Fagan, J. (1993) 'Set and Setting Revisited: Influences of Alcohol and Illicit Drugs on the Social Context of Violent Events' in S.E. Martin (ed.) *Alcohol and Interpersonal Violence: Fostering Multidisciplinary Perspectives*, Vol 24, Rockville, MD: NIH.

Felson, M., Berends, R., Richardson, B. and Veno, A. (1997) 'Reducing Pub Hopping and Related Crime' in R. Homel (ed.) *Policing for Prevention: Reducing Crime, Public Intoxication and Injury*, Crime Prevention Studies, Volume 7, Monsey, NY: Criminal Justice Press.

Felson, M. and Clarke, R. (1998) Opportunity Makes the Thief: Practical Theory *for Crime Prevention*, Police Research Series 98, London: HMSO.

Felson, R. (1997) 'Routine Activities and Involvement in Violence as Actor, Witness, or Target,' *Violence and Victims*, 12/3: 209-221.

Felson, R., Baccaglini, W. and Gmelch, G. (1986) 'Bar-room Brawl: Aggression and Violence in Irish and American Bars' in A. Campbell and J.J. Gibbs (eds.) *Violent Transactions*, Oxford: Blackwell.

Fielding, N. (1981) *The National Front*, London: Routledge & Kegan Paul.

Finch, J. (1984) 'It's Great to Have Someone to Talk to: the Ethics and Politics of Interviewing Women,' in C. Bell and H. Roberts (eds.) *Social Researching: Politics, Problems and Practice*, London: Routledge.

Fitzpatrick, J. (1980) 'Adapting to Danger: A Participant Observation Study of an Underground Mine,' *Sociology of Work and Occupations*, 7/2: 131-158.

Freedman, M. (1975), *Lawyer's Ethics in an Adversary System*, New Brunswick: Oxford.

Friedman, M. ([1962] 1982) *Capitalism and Freedom*, Chicago: University of Chicago Press.

Galligan, D. (1996) *Due Process and Fair Procedures*, Oxford: Clarendon.

Garfinkel, H. (1956) 'Conditions of Successful Degradation Ceremonies,' *American Journal of Sociology*, 61: 420-24.

Garland, D. (2001) *The Culture of Control: Crime and Social Order in Contemporary Society,* Oxford: Oxford University Press.

Geller, E. and Kalsher, M. (1990) 'Environmental Determinants of Party Drinking,' *Environment and Behavior*, 22: 74-90.

Gerth, H. and C. Wright Mills (1946) [1958] (translators and editors) *From Max Weber: Essays in Sociology*, New York: Galaxy Books.

Gibbs, J. (1986) 'Alcohol Consumption, Cognition and Context, Examining Tavern Violence' in A. Campbell and J. Gibbs (eds.) *Violent Transactions: The Limits of Personality*, Oxford: Blackwell.

Giddens, A. (1976) *New Rules of Sociological Method: A Positive Critique of Interpretive Sociologies*, London: Hutchinson.

Giddens, A. (1979) *Central Problems in Social Theory*, London: Macmillan.

Giddens, A. (1984) *The Constitution of Society*, Cambridge: Polity.

Giesbrecht, N., Gonzales, R. and Grant, M. (1989) *Drinking and Casualties: Accidents, Poisonings and Violence in an International Perspective*, London: Tavistock/Routledge.

Girling, E., Loader, I. and Sparks, R. (2000) *Crime and Social Change in Middle England: Questions of Order in an English Town*, London: Routledge.

GLA (Greater London Authority) (2002a) *Late-Night London: Planning and Managing the Late-Night Economy*, Urbed in association with CASA and Dr Andy Lovatt, commissioned by the Greater London Authority, the London Development Agency and Transport for London. SDS Technical Report Six, June, London: GLA.

GLA (Greater London Authority) (2002b) *Whatever Gets You Through the Night: 24-Hour Licensing in London*, London: GLA.

Goff, C. (1995) 'Due Process and the Nova Scotia Herbicide Trial' in F. Pearce and L. Snider (eds.) *Corporate Crime: Contemporary Debates*, Toronto: University of Toronto Press.

Goffman, E. (1952) 'On Cooling the Mark Out: Some Aspects of Adaptation to Failure,' *Psychiatry*, 15: 451-63.

Goffman, E. (1959) *The Presentation of Self in Everyday Life*, Harmondsworth: Penguin.

Goffman, E. (1963) *Behaviour in Public Places*, New York: Free Press.

Goffman, E. (1967) *Interaction Ritual: Essays on Face-to-Face Behaviour*, Harmondsworth: Penguin.

Goffman, E. (1969) *Strategic Interaction*, Oxford: Basil Blackwell.

Goffman, E. (1971) *Relations in Public: Microstudies of the Public Order*, London: Allen Lane The Penguin Press.

Goffman, E. (1974) *Frame Analysis: An Essay on the Organization of Experience*, Harmondsworth: Penguin.

Gofton, L. (1990) 'On the Town: Drink and the 'New Lawlessness,' *Youth and Policy*, 29, (April): 33-39.

Goodwin, B. (1992) *Using Political Ideas*, 3rd ed. Chichester: John Wiley and Sons.

Gottfredson, M. (1984) *Victims of Crime: The Dimensions of Risk*, Home Office Research Study No. 81, London: HMSO.

Gottlieb, D. (1957) 'The Neighbourhood Tavern and the Cocktail Lounge' *American Journal of Sociology*, 62: 559-562.

Gouldner, A. (1962) 'Anti-Minotaur: The Myth of a Value-Free Sociology,' *Social Problems*, 9/3: 199-213.

Gouldner, A. (1970) *The Coming Crisis of Western Sociology*, New York: Avon Books.

Graham, K. (1985) 'Determinants of Heavy Drinking and Drinking Problems: The Contribution of the Bar Environment' in E. Single and T. Storm (eds.) *Public Drinking and Public Policy*, Toronto, Canada: Addiction Research Foundation.

Graham, K. and Homel, R. (1997) 'Creating Safer Bars' in M. Plant, E. Single and T. Stockwell (eds.) *Alcohol: Minimising the Harm – What Works?* London: Free Association Books

Graham, K., LaRocque, L., Yetman, R., Ross, T.J. and Guistra, E. (1980) 'Aggression and Bar Room Environments,' *Journal of Studies on Alcohol,* 41: 277-292.

Graham, K. and Wells, S. (2003) 'Somebody's Gonna Get Their Head Kicked in Tonight!: Aggression Among Young Males in Bars- A Question of Values?,' *British Journal of Criminology*, 43: 546-566.

Graham, K., West, P. and Wells, S. (2000) 'Evaluating Theories of Alcohol-related Aggression Using Observations of Young Adults in Bars' *Addiction*, 95/6: 847-863.

Graves, T., Graves, N., Semu, V.. and Sam, I.. (1981) 'The Social Context of Drinking and Violence in New Zealand's Multi-ethnic Pub Settings' in T.C. Harford and L.S. Gaines (eds.) *Research Monograph No. 7 Social Drinking Contexts*, Rockville, MD: NIAAA.

Grayling, A. (2004) 'The Reason of Things: On Manners,' *The Times*, Review, 6 March: 9.

Green, E., Mitchell, W. and Bunton, R. (2000) 'Contextualizing Risk and Danger: An Analysis of Young People's Perceptions of Risk,' *Journal of Youth Studies*, 3/2: 109-126.

Green, S. (2003) 'Witness Statement of Stephen Green, Chief Constable of Nottinghamshire' in Chief Constable of Nottinghamshire v Clegg (Springwood Leisure Plc) Nottingham Crown Court, February.

Green, S. (2004) 'The Mop-and-Bucket of a Sick Culture,' *Alcohol Alert*, 3: 2-3.

Gusfield, J. (1987) 'A Passage to Play: Rituals of Drinking Time in American Society in M. Douglas (ed.) *Constructive Drinking: Perspectives on Drink from Anthropology*, New York: Cambridge University Press.

Haas, J. (1977) 'Learning Real Feelings: A Study of High Steel Ironworkers' Reactions to Fear and Danger,' *Sociology of Work and Occupations*, 4/2: 147-170.

Hadfield, P. (2003) 'Review Article: Counting the Cost: The Measurement and Recording of Alcohol-Related Violence and Disorder by Marsh, P. et al., London: The Portman Group,' *British Journal of Criminology*, 43/2: 449-451.

Hadfield, P. (2004) 'Invited to Binge? - Licensing and the 24-Hour City,' *Town and Country Planning*, 73/7-8, July/August: 235-236.

Hadfield, P. with contributions from J. Collins, P. Doyle, R. Flynn and P. Kolvin (2005a) 'The Operation of Licensed Premises' in P. Kolvin (ed) *Licensed Premises: Law and Practice*, London: Tottel.

Hadfield, P., with contributions by J. Collins, P. Doyle and Ken Mackie (2005b) 'The Prevention of Public Disorder' in P. Kolvin (ed) *Licensed Premises: Law and Practice*, London: Tottel.

Hadfield, P. and Elvins, M. (2003) 'A Thirst for Knowledge: The Measurement and Analysis of Night-Time Economy-Related Environmental Stress Indices,' University of Durham, Working Paper.

Hadfield, P., Lister, S., Hobbs, D. and Winlow, S. (2001) 'The '24-Hour City'- Condition Critical?' *Town and Country Planning*, 70/11, November: 300-302.

Hammersley, R., Khan, F. and Ditton, J. (2002) *Ecstasy and the Rise of the Chemical Generation*, London: Routledge.

Hannigan, J. (1998) *Fantasy City: Pleasure and Profit in the Post-modern Metropolis*, London: Routledge.

Harcourt, B. (2001) *Illusion of Order: The False Promise of Broken Windows Policing*, London: Harvard University Press.

Harding, J. (1992) 'Due Process in Saskatchewan's Uranium Inquiries' in D. Currie and B. MacLean (eds) *Re-Thinking the Administration of Justice*, Halifax Nova Scotia: Fernwood Publishing.

Harnett, R., Thom, B., Herring, R. and Kelly, M. (2000) 'Alcohol in Transition: Towards a Model of Young Men's Drinking Styles,' *Journal of Youth Studies*, 3/1: 61-77.

Harrington, J. and Halstead, T. (2004) 'Saturation: Councils 'Face Rude Awakening,' *The Morning Advertiser*, 2 December, 223: 1.

Harrison, B. (1967) 'Religion and Recreation in Nineteenth-Century England,' *Past and Present*, 38: 98-125.

Harrison, B. (1973) 'Pubs' in H. Dyos and M. Wolff (eds.) *Victorian City: Images and Realities, Volume 1*, London: Routledge & Kegan Paul.

Harrison, B. (1994) *Drink and the Victorians: The Temperance Question in England 1815-1872*, Keele: Keele University Press.

Haskins, C. (1998) 'The Magistrate Debate: Licensing Powers,' *The Magistrate*, October: 216.

Haslam, D. (1999) *Manchester England: The Story of the Pop Cult City*, London: Fourth Estate.

Hayek, F. A. (1948) *Individualism and Economic Order*, London: Routledge & Kegan Paul.

Heath, D. (2000) *Drinking Occasions: Comparative Perspectives on Alcohol and Culture*, Hove: Brunner/Mazel.

Heath, T. (1997) 'The Twenty-Four Hour City Concept – A Review of Initiatives in British Cities,' *Journal of Urban Design*, 2/2: 193-204.

Heath, T. and Stickland, R. (1997) 'The Twenty-Four Hour City Concept,' in T. Oc and S. Tiesdell (eds.) *Safer City Centres: Reviving the Public Realm*, London: Paul Chapman Publishing.

Hetherington, P. (2003a) 'Battle of the Binge: Is Britain's Drinking Culture Out of Control?' *Guardian*, Society, 3 December: 1-4.

Hetherington, P. (2003b) 'Resident Anger as Bars Exploit Licence to Booze,' *Guardian*, 24 May, 18.

Hey, V. (1986) *Patriarchy and Pub Culture*, London: Tavistock.

Hirschi, T. (1969) *Causes of Delinquency*, Los Angeles: University of California Press.

Hobbs, D. (1988) *Doing the Business: Entrepreneurship, Detectives and the Working Class in the East End of London*, Oxford: Clarendon.

Hobbs, D., Hadfield, P., Lister, S. and Winlow, S. (2002) 'Door Lore: The Art and Economics of Intimidation,' *British Journal of Criminology*, 42/2: 352-370.

Hobbs, D., Hadfield, P., Lister, S. and Winlow, S. (2003) *Bouncers: Violence and Governance in the Night-time Economy*, Oxford: Oxford University Press.

Hobbs, D., Lister, S., Hadfield. P., Winlow, S. and Hall, S. (2000) 'Receiving Shadows: Governance and Liminality in the Night-time Economy,' *British Journal of Sociology*, 51/4: 701-717.

Hobbs, D., Winlow, S., Hadfield, P. and Lister, S. (2005) 'Violent Hypocrisy: Governance and the Night-time Economy,' *European Journal of Criminology*, 2/2: 154-176.

Hochschild, A. (1983) *The Managed Heart: Commercialization of Human Feeling*, Berkeley: University of California Press.

Hogarth, W. (1973) [1738] 'The Four Times of the Day: Plate IV' in *Engravings by Hogarth*, New York: Dover.

Holden, T. and Stafford, J. (1997) *Safe and Secure Town Centres: A Good Practice Guide*, London: Association of Town Centre Management in conjunction with Marks and Spencer plc.

Hollands, R. (2000) 'Lager Louts, Tarts and Hooligans: the Criminalisation of Young Adults in a Study of Newcastle Nightlife,' in V. Jupp, P. Davies and P. Francis (eds.) *Doing Criminological Research*, London: Sage.

Hollands, R. (2002) 'Divisions in the Dark: Youth Cultures, Transitions and Segmented Consumption Spaces in the Night-time Economy,' *Journal of Youth Studies*, 5/2: 153-171.

Hollway, W. and Jefferson, T. (1997) 'The Risk Society in an Age of Anxiety: Situating Fear of Crime,' *British Journal of Sociology*, 48/2: 255-266.

Home Office, (2000a) *Time For Reform: Proposals for the Modernisation of Our Licensing Laws*, London: HMSO.

Home Office (2000b) *Tackling Alcohol-related Crime, Disorder and Nuisance: Action Plan*, London: HMSO.

Home Office (2003a) *Respect and Responsibility-Taking a Stand Against Anti-Social Behaviour*, London: Stationery Office.

Home Office (2003b) *Guidance for Local Partnerships on Alcohol-Related Crime and Disorder Data*, London: Home Office Development and Practice Report 6 (Drugs and Alcohol).

Homel, R. and Clark, J. (1994) 'The Prediction and Prevention of Violence in Pubs and Clubs,' *Crime Prevention Studies*, 3: 1-46.

Homel, R., Tomsen, S. and Thommeny, J. (1992) 'Public Drinking and Violence: Not Just an Alcohol Problem,' *Journal of Drug Issues*, 22/3: 679-697.

Hope, T. (1985) 'Drinking and Disorder in the City Centre: A Policy Analysis,' in *Implementing Crime Prevention Measures*, Home Office Research Study No. 86, London: HMSO.

Hope, T. (2001) 'Community Crime Prevention in Britain: A Strategic Overview,' *Criminal Justice*, 1 (4) 421-439.

Hough, M. and Tilley, N. (1998) *Auditing Crime and Disorder: Guidance for Local Partnerships*, Crime Detection and Prevention Series, Paper 91, London: Home Office Police Research Group.

Hu, C. (2003) 'Price Discounts "Out of Control" in Birmingham,' *The Morning Advertiser*, 11 September, 161: 2.

Humphreys, L. (1970) *Tearoom Trade*, London: Gerald Duckworth & Co Ltd.

Hyam, M. (1999) *Advocacy Skills*, London: Blackstone.

IAS (Institute of Alcohol Studies) (2005) *Drinking Responsibly: The Government's Proposals: Response from the Institute of Alcohol Studies*, London: IAS.

Isle of Man Constabulary, (2002) *Chief Constable's Annual Report 2001-2002*, Douglas: Isle of Man Constabulary.

Jackson (2004) *Inside Clubbing: Sensual Experiments in the Art of Being Human*, Oxford: Berg.

Jacobs, J. (1961) *The Death and Life of Great American Cities*, Harmondsworth: Penguin.

Jacobs, K. (1992) 'Night Discourse' in S. Heller and K. Jacobs (eds.) *Angry Graphics*, Layton: Utah: Gibbs Smith.

Jacquemet, M. (1996) *Credibility in Court: Communicative Practices in the Camorra Trials*, Cambridge: Cambridge University Press.

Jeavons, C. and Taylor, S. (1985) 'The Control of Alcohol-related Aggression: Redirecting the Inebriate's Attention to Socially Appropriate Conduct,' *Aggressive Behavior*, 11: 93-101.

Jeffries, S. (2004) 'Give up the Ghosts' *The Guardian G2*, 29 Oct.: 2-3.

Jermier, J. (1982) 'Ecological Hazards and Organizational Behaviour: A Study of Dangerous Urban Space-Time Zones,' *Human Organization*, 41/3: 198-207.

Jones, P., Hillier, D. and Comfort, D. (2003) 'Business Improvement Districts- Another Piece in the UK Regeneration Jigsaw?,' *Town & Country Planning*, 72, June: 158-161.

Jones, P., Hillier, D. and Turner, D. (1999) 'Towards the '24-Hour City,' *Town & Country Planning*, 68, May: 164-165.

Justices' Clerks' Society, (1999) *Good Practice Guide: Licensing*, London: Justices' Clerks' Society.

Kafka, F. (1994) [1925] *The Trial*, trans. I. Parry, London: Penguin.

Katovich, M. and Reese, W. (1987) 'The Regular: Full Time Identities and Memberships in an Urban Bar,' *Journal of Contemporary Ethnography*, 16/3: 308-343.

Kershaw, C., Budd, T., Kinshott, G., Mattinson, J., Mayhew, P. and Myhill, A. (2000) *The 2000 British Crime Survey*, Home Office Statistical Bulletin, London: HMSO.

Kettle, M. (2003) 'Alcoholic Britain Should not be Offered another Drink,' *Guardian*, Society, 2 January, 2-3.

Kingsdale, J. (1973) 'The "Poor Man's Club": Social Functions of the Urban Working-Class Saloon,' *American Quarterly*, XXV/4: 472-489.

Kinkade, P. and Katovich, M. (1997) 'The Driver: Adaptations and Identities in the Urban Worlds of Pizza Delivery Employees,' *Journal of Contemporary Ethnography*, 25/4: 421-448.

Klein, N. (2001) *No Logo*, London: Flamingo.

Kolvin, P. (2005) 'Introduction:' in P. Kolvin (ed.) *Licensed Premises: Law and Practice*, London: Tottel.

Kreitzman, L. (1999) *The 24-Hour Society*, London: Profile.

Langbein, J. (2003) *The Origins of Adversary Criminal Trial*, Oxford: Oxford University Press.

Lasley, J. (1989) 'Drinking Routines/Lifestyles and Predatory Victimisation: A Causal Analysis,' *Justice Quarterly*, 6: 529-42.

Law, R. (1999) 'Beyond "Women and Transport": Towards New Geographies of Gender and Daily Mobility,' *Progress in Human Geography*, 23/4: 567-588.

Leather, P. and Lawrence, C. (1995) 'Perceiving Pub Violence: The Symbolic Influence of Social and Environmental Factors,' *British Journal of Social Psychology*, 34: 395-407.

Leidner, R. (1993) *Fast Food, Fast Talk: Service Work and the Routinization of Everyday Life*, London: University of California Press.

Leigh, B. (1999) 'Peril, Chance, Adventure: Concepts of Risk, Alcohol Use and Risky Behaviour in Young Adults,' *Addiction*, 94/3: 371-83.

Leeds City Council, (1995) *Leeds: 24 Hour City Licensing*. Leeds: LCC Legal Services Department.

LeMasters, E. (1973) 'Social Life in a Working Class Tavern,' *Urban Life and Culture*, 2/1: 27-52,

LeMasters, E. (1975) *Blue Collar Aristocrats: Lifestyles at a Working Class Tavern*, London: University of Wisconsin Press.

Levinson, D. (1983) 'Social Setting, Cultural Factors and Alcohol-related Aggression' in E. Gottheil, K. Druley, T. Skoloda and H. Waxman (eds.) *Alcohol, Drug Abuse and Aggression*, Springfield: IL: Charles C. Thomas.

Levy, A. and Scott-Clark, C. (2004) 'Under the Influence,' *Guardian Weekend*, 20 November: 14-30.

Leyland, P. and Woods, T. (2002) *Textbook on Administrative Law*, 4th ed., Oxford: Oxford University Press.

LGA (Local Government Association) (2002) *All Day and All of the Night?: An LGA Discussion Paper*, London: LGA.

Light, R. (2000) 'Liberalising Liquor Licensing Law: Order Into Chaos?' *New Law Journal*, 150/6941 (23 June): 926-929.

Light, R. and Heenan, S. (1999) *Controlling Supply: The Concept of 'Need' in Liquor Licensing*, Bristol: University of the West of England.

Lindner, R. (1996) *The Reportage of Urban Culture: Robert Park and the Chicago School*, Cambridge: Cambridge University Press.

Link, L. (1995) *The Devil: A Mask Without a Face*, London: Reaktion Books.

Linton, N. (1965) 'The Witness and Cross-Examination,' *Berkeley Journal of Sociology*, 1-12.

Lipsey, M., Wilson, D., Cohen, M. and Derzon, J. (1997) 'Is there a Causal Relationship Between Alcohol and Violence?' in M. Galanter (ed.) *Recent Developments in Alcoholism*, 13: 245-282, New York: Plenum Press.

Lister, S., Hobbs, D., Hadfield, P. and Winlow, S. (2001) *Policing the Night-time Economy in Eastville*, University of Durham Working Paper.

Lister, S., Hobbs, D., Hall. S. and Winlow, S. (2000) 'Violence in the Night-time Economy; Bouncers: The Reporting, Recording and Prosecution of Assaults,' *Policing and Society*, 10: 383-402.

Livingston, D. (1997) 'Police Discretion and the Quality of Life in Public Places: Courts, Communities and the New Policing,' *Columbia Law Review*, 97/3: 551-672.

Loader, I. (1994) 'Democracy, Justice and the Limits of Policing: Rethinking Police Accountability,' *Social & Legal Studies*, 3: 521-544.

Lofland, L. (1973) *A World of Strangers: Order and Action in Urban Public Space*, Prospect Heights, IL: Waveland.

Lofland, L. (1998) *The Public Realm: Exploring the City's Quintessential Social Territory*, Hawthorne, NY: Aldine De Gruyter.

Lovatt, A. (1996) 'The Ecstasy of Urban Regeneration: Regulation of the Night-time Economy in the Transition to a Post-Fordist City,' in J. O' Connor and D. Wynne (eds.) *From the Margins to the Centre: Cultural Production and Consumption in the Post-Industrial City*, Aldershot: Arena.

Lovatt, A., O'Connor, J., Montgomery, J. and Owens, P. (eds.) (1994) *The 24-Hour City: Selected Papers from the First National Conference on the Night-time Economy*, Manchester: Manchester Metropolitan University.

Lupton, D. (1999) *Risk*, London: Routledge.

Lyman, S. and Scott, M. (1967) 'Territoriality: A Neglected Sociological Dimension,' *Social Problems*, 236-249.

Lyng, S. (1990) 'Edgework: A Social Psychological Analysis of Voluntary Risk Taking,' *American Journal of Sociology*, 95/4: 851-86.

McBarnet, D. (1981) *Conviction: Law, the State and the Construction of Justice*, London: Macmillan.

McCurry, P. (2003) 'Last Orders,' *Guardian*, 9 April: 5-6.

McKenna, P. (1996) *Nightshift*, Argyll: S. T. Publishing.

McVeigh, A. (1997) 'Screening for Straights: Aspects of Entrance Policy at a Gay Disco,' *Irish Journal of Sociology*, 7: 77-98.

Macalister, T. (2001) 'Wetherspoon Tops Growth Poll,' *The Guardian*, 6 June: 15.

MacAndrew, C. and Edgerton, R. (1969) *Drunken Comportment: A Social Explanation*, London: Thomas Nelson and Sons Ltd.

Macclesfield Express (2003) 'Crackdown.' 31 December: 1-2.

Macintyre, S. and Homel, R. (1997) 'Danger on the Dance Floor: A Study of Interior Design, Crowding and Aggression in Nightclubs,' in R. Homel (ed.) *Policing for Prevention: Reducing Crime, Public Intoxication and Injury*, Crime Prevention Studies, Volume 7, Monsey, NY: Criminal Justice Press.

Magennis, P., Shepherd, J., Hutchinson, H. and Brown, A. (1998) 'Trends in Facial Injury,' *British Medical Journal*, 316: 325-326.

Magistrates' Association (2000) *Response to White Paper- Time for Reform*, London: Magistrates' Association.

Maguire, M. and Nettleton, H. (2003) *Reducing Alcohol-related Violence and Disorder: an Evaluation of the 'TASC' Project*, London: Home Office.

Malbon, B. (1999) *Clubbing: Dancing, Ecstasy and Vitality*, London: Routledge.

Manchester, C. (1999) *Entertainment Licensing: Law and Practice*, 2nd ed., London: Butterworths.

Manning, P. (1992) *Erving Goffman and Modern Sociology*, Cambridge: Polity.

Manning, P. (2000) 'Credibility, Agency, and the Interaction Order,' *Symbolic Interaction*, 23/3: 283-297.

Markowitz, S. (2000) *Criminal Violence and Alcohol Beverage Control: Evidence from an International Study*, NBER Working Paper 7481, Cambridge, MA: National Bureau of Economic Research.

Marsh, P., Bradley, S., Peck, F. and Carnibella, A. (2002) *Counting The Cost: The Measurement and Recording of Alcohol-Related Violence and Disorder*, London: The Portman Group.

Marsh, P. and Fox Kibby, K. (1992) *Drinking and Public Disorder*, London: The Portman Group.

Marshall, G. (1986) 'The Workplace Culture of a Licensed Restaurant' *Theory, Culture and Society*, 3/1: 33-47.

Marshall, M. (1979) *'Weekend Warriors': Alcohol in a Micronesian Culture*, Palo Alto, CA: Mayfield.

Marx, K. (1976) [1867] *Capital: A Critique of Political Economy, Volume 1*, London: Penguin.

Mass Observation (1943) [1970] *The Pub and the People: A Worktown Study*, Welwyn Garden City: Seven Dials Press.

Matoesian, G. (1993) *Reproducing Rape: Domination through Talk in the Courtroom*, Cambridge: Polity.

Mattinson, J. (2001) *Stranger and Acquaintance Violence: Practice Messages from the British Crime Survey*, Home Office Briefing Note 7/01. London: Home Office.

Mayer, J. and Rosenblatt, A. (1975) 'Encounters with Danger: Social Workers in the Ghetto,' *Sociology of Work and Occupations*, 2/3: 227-245.

Mayhew, H. (1950) *London's Underworld*, P. Quennell (ed.), London: Spring Books.

MCM Research, (1990) *Conflict and Violence in Pubs*, Oxford: MCM Research Ltd.

Mehigan, S. and Phillips, J. with contributions from Barker, K. and Collins, D. (2003) *Paterson's Licensing Acts 2003*, 111th ed., London: Butterworths.

Mehigan, S., Phillips, J. and Saunders, J. (2004) *Paterson's Licensing Acts 2004: Volume 1: Liquor and Entertainment Licensing*, 112th ed., London: Butterworths.

Melbin, M. (1978) 'Night as Frontier' *American Sociological Review*, 43/1: 3-22.

Melbin, M. (1987) *Night as Frontier: Colonizing the World After Dark*, London: The Free Press.

Metropolitan Police (2004) *Preliminary Assessment of the Impact of the Licensing Act 2003 on the Metropolitan Police Service*, London: Metropolitan Police Clubs and Vice Operational Command Unit.

Mies, M. (1983) 'Towards a Methodology for Feminist Research' in Bowles, G. and Duelli Klein, R. (eds.) *Theories of Women's Studies*, London: Routledge.

Miethe, T., Stafford, M. and Long, J. (1987) 'Social Differentiation in Criminal Victimization: a Test of Routine Activities/Lifestyle Theories,' *American Sociological Review*, 52: 184-194.

Mill, J. S. (1974) *On Liberty*, ed. G. Himmelfarb, Harmondsworth: Penguin.

Miller, J. and Glassner, B. (1997) 'The 'Inside' and 'Outside': Finding Realities in Interviews,' in D. Silverman (ed.) *Qualitative Research: Theory, Method and Practice*, London: Sage.

Milne, L. and Milne, M. (1956) *The World of Night*, New York: Harper and Brothers.

Mirauer, W. (2001) 'A Small Town in England,' *Night*, August: 106.

Mirrlees-Black, C., Budd, T., Partridge, S. and Mayhew, P. (1998) *The 1998 British Crime Survey: England and Wales*, London: HMSO.

Moir, E. (1969) *The Justices of the Peace*, Harmondsworth: Penguin.

Monaghan, L. (2002a) 'Regulating 'Unruly' Bodies: Work Tasks, Conflict and Violence in Britain's Night-Time Economy,' *The British Journal of Sociology*, 53/3: 403-29.

Monaghan, L. (2002b) 'Hard Men, Shop Boys and Others: Embodying Competence in a Masculinist Occupation,' *The Sociological Review*, 50/3: 334-55.

Monaghan, L. (2002c) 'Opportunity, Pleasure and Risk: An Ethnography of Urban Male Heterosexualities,' *Journal of Contemporary Ethnography*, 31/4: 440-477.

Monbiot, G. (2000) *Captive State: The Corporate Takeover of Britain*, London: Pan Macmillan.

Montgomery, J. (1995) 'Urban Vitality and the Culture of Cities,' *Planning Practice and Research*, 10/2: 101-109.

Montgomery, J. (1997) 'Café Culture and the City: The Role of Pavement Cafés in Urban Public Social Life,' *Journal of Urban Design*, 2/1: 83-102.

Montgomery, J. and Owens, P. (1997) 'The Evening Economy of Cities' *Regenerating Cities*, 7: 32-39.

Moore-Ede, M. (1993) *The 24-Hour Society: The Risks, Costs and Challenges of a World that Never Stops*, London: Piatkus.

Moran, L., Skeggs, B., Tyrer, P. and K. Corteen (2003) 'The Constitution of Fear in Gay Space' in E. A. Stanko (eds.) *The Meanings of Violence*, London: Routledge.

Morning Advertiser (2003a) 'Weekly Takings Soar at Lloyds No 1 Venues,' 11 September: 11.

Morning Advertiser (2003b) 'Luminar Seeks Equality in Law,' 28 August 2003: 15.

Mort, F. (2000) 'The Sexual Geography of the City' in G. Bridge and S. Watson (eds.) *A Companion to the City*, London: Blackwell.

Muchembled, R. (1985) *Popular Culture and Elite Culture in France, 1400-1750.* Baton Rouge: Louisiana State University Press.

Munkman, J. (1986) *The Techniques of Advocacy*, London: Sweet and Maxwell.

Napley, D. (1970) *The Technique of Persuasion*, London: Sweet and Maxwell.

Nasar, J. and Fisher, B. (1993) 'Hot-spots of Fear and Crime: A Multi-Method Investigation,' *Journal of Environmental Psychology*, 13: 29-49.

Nearne, S. (2003) 'The New Licensing Bill: Over-Regulating the British Pub?' *Institute of Economic Affairs Bulletin*, June: 28-33.

Nelson, A., Bromley, R. and Thomas, C. (2001) 'Identifying Micro-spatial and Temporal Patterns of Violent Crime and Disorder in a British City Centre,' *Applied Geography*, 21: 249-274.

Nicholson Committee (2003) *Review of Liquor Licensing Law in Scotland*, Edinburgh: Scottish Executive.

Night, (2000) 'Pride of the North,' September: 12-16.

Night, (2001a) 'Ultimate in Leisure,' December: 18-20.

Night, (2001b) 'Going Global,' September: 36-37.

O'Barr, W. (1982) *Linguistic Evidence: Language, Power and Strategy in the Courtroom*, London: Academic Press.

Oc, T. and Tiesdell, S. (1997) 'Towards Safer City Centres' in T. Oc and S. Tiesdell, (eds.) *Safer City Centres: Reviving the Public Realm*, London: Paul Chapman Publishing Ltd.

Oc, T. and Trench, S. (1993) 'Planning and Shopper Security,' in R. D. F. Bromley and C. J. Thomas (eds.) *Retail Change: Contemporary Issues*, London: UCL Press.

O'Connor, J. and Wynne, D. (1996) 'Introduction' in J. O'Connor and D. Wynne (eds.) *From the Margins to the Centre: Cultural Production and Consumption in the Post-Industrial City*, Aldershot: Arena.

O'Dea, W. (1958) *The Social History of Lighting*, London: Routledge and Kegan Paul.

ODPM (Office of the Deputy Prime Minister) (2002) *Consultation on Possible Changes to the Use Classes Order and Temporary Uses Provisions*, London: OPDM.

Oldenburg, R. (1997) *The Great Good Place*, New York: Marlowe.

Osborne, D and Gaebler, T. (1992) *Reinventing Government*, Reading, MA: Addison-Wesley.

Pain, R. (2001) 'Gender, Race, Age and Fear in the City,' *Urban Studies*, 38, 5-6: 899-913.

Palmer, B. (2000) *Cultures of Darkness: Night Travels in the Histories of Transgression from Medieval to Modern*, New York: Monthly Review Press.

Pannick, D. (1987) *Judges*, Oxford: Oxford University Press.

Pannick, D. (1992) *Advocates*, Oxford: Oxford University Press.

Parker, H., Williams, L. and Aldridge, J. (2002) 'The Normalization of 'Sensible' Recreational Drug Use: Further Evidence from the North West England Longitudinal Study,' *Sociology*, 36/4: 941-964.

Parker, S. (2003) 'Drink and be Merry' *Guardian*, 8 April: 4.

Parks, K., Miller, B. Collins, R. and Zetes-Zanatta, L. (1998) 'Women's Descriptions of Drinking in Bars: Reasons and Risks,' *Sex Roles*, 38/9-10: 701-717.

Pearce, F. and Tombs, S. (1997) 'Hazards, Law and Class: Contextualizing the Regulation of Corporate Crime' *Social & Legal Studies*, 6/1: 79-107.

Pearce, F. and Tombs, S. (1998) *Toxic Capitalism: Corporate Crime and the Chemical Industry*, Aldershot: Dartmouth.

Pease, K. (2002) 'Crime Reduction' in M. Maguire, R. Morgan and R. Reiner (eds.) *The Oxford Handbook of Criminology*, 3rd ed., Oxford: Oxford University Press.

Penny, M. (1993) *Nightlife: The Secret World of Nocturnal Creatures*, London: Boxtree.

Phillips, J. (2002) *Licensing Law Guide*, 3rd edition, London: Butterworths.

Phillips, T. and Smith, P. (2000) 'Police Violence Occasioning Citizen Complaint: An Empirical Analysis of Time-Space Dynamics,' *British Journal of Criminology*, 40: 480-496.

Pilditch, D. (2003) 'Yobs to be Caged' *Daily Express*, 23 August: 27.

Plant, M., Miller, P., Plant, M. and Nichol, P. (1994) 'No Such Thing as Safe Glass,' *British Medical Journal*, 308: 6-7.

Plant, M. and Plant, M. (1992) *Risk Takers: Alcohol, Drugs, Sex and Youth*, London: Routledge.

Plato, (1987) *Gorgias*, trans. D. Zeyl, Indianapolis: Hackett.

Potter, J. (1996) *Representing Reality: Discourse, Rhetoric and Social Construction*, London: Sage.

Press, S. (2001) 'The Best Bar None,' *Manchester Evening News*, 21 July: 30.

Prus, R. (1983) 'Drinking as Activity: An Interactionist Analysis,' *Journal of Studies on Alcohol*, 44/3: 460-475.

Punch, M. (1978) 'Backstage: Observing Police Work in Amsterdam,' *Urban Life*, 7/3: 309-335.

Punch, M. (1996) *Dirty Business: Exploring Corporate Misconduct*, London: Sage.

Rabin, R. (2001) 'The Third Wave of Tobacco Tort Litigation' in R. Rabin and S. Sugarman (eds) *Regulating Tobacco*, Oxford: Oxford University Press.

Ranatunga, A. (2005) 'Appeals and Judicial Review' in P. Kolvin (eds.) *Licensed Premises: Law and Practice*, London: Tottel.

Ravenscroft, N. (2000) 'The Vitality and Viability of Town Centres,' *Urban Studies*, 37: 2533-2549.

Redhead, S., Wynne, D. and O'Connor, J. (eds.) (1998) *The Clubcultures Reader*, London: Blackwell.

Reeve, A. (1995) 'The Private Realm of the Managed Town Centre,' *Urban Design International*, 1/1: 61-80.

Reeve, A. (1998) 'Risk and the New Urban Space of Managed Town Centres,' *International Journal of Risk, Security and Crime Prevention*, 3/1: 43-54.

Release (1997) *Release Drugs and Dance Survey*, London: Release.

Ridout (2003) 'High Noon on the High Street,' *The Morning Advertiser*, 17 July: 38.

Ries, A. and Ries, L. (1999) *The 22 Immutable Laws of Branding*, London: Harper Collins.

Riessman, C. (1993) *Narrative Analysis,* Newbury Park, CA: Sage Publications.

Rietveld, H. (1993) 'Living the Dream', in S. Redhead (ed.), *Rave Off: Politics and Deviance in Contemporary Youth Culture*, Aldershot: Avebury Press.

Ritzer, G. (2004) *The Globalization of Nothing*, London: Pine Forge.

Roberts, R. (1971) *The Classic Slum*, Harmondsworth: Penguin.

Rock, P. (1979) *The Making of Symbolic Interactionism*, London: Macmillan.

Rock, P. (1993) *The Social World of an English Crown Court*, Oxford: Clarendon Press.

Rodaway, P. (1994) *Sensuous Geographies: Body, Sense and Place*, London: Routledge.

Roebuck, J. and Frese, W. (1976) *The Rendezvous: A Case Study of an After-Hours Club*, New York: The Free Press.

Rogan, K. (2002) 'Just the Facts?' *The Publican*, 14 March, http://www.thepublican.com/cgi-bin/item.cgi?id=5633&d=28&h=30&f=29.

Rogers, B. (1988) *Men Only: an Investigation into Men's Organizations*, London: Pandora.

Rogers, M. (1980) 'Goffman on Power, Hierarchy, and Status,' in J. Ditton (ed.) *The View from Goffman*, London: Macmillan.

Rogers, R. edited by Gumuchdjian, P. (1997) *Cities for a Small Planet.* London: Faber and Faber Limited.

Room, R. (1997) 'Alcohol, the Individual and Society: What History Teaches Us,' *Addiction*, 92, Supplement 1: 7-11.

Room, R. (2004) 'Disabling the Public Interest: Alcohol Strategies and Policies for England,' *Addiction*, 99: 1083-1089.

Rosenzweig, R. (1983) *Eight Hours for What We Will: Workers and Leisure in an Industrial City, 1870-1920*, Cambridge: Cambridge University Press.

Rowley, M. and Ravenscroft, N. (1999) 'Leisure Property as an Indicator of the Changing Vitality and Viability of Town Centres: A Case Study, in P. Bramham and W. Murphy (eds.) *Policy and Publics: Leisure, Culture and Commerce*, Eastbourne: Leisure Studies Association.

Rubinstein, W. (1973) *City Police*, New York: Ballantine.

Salusbury-Jones, G. (1938) *Street Life in Medieval England*, Oxford: Pen-in-Hand Publishing.

Sasson, T. (1995) *Crime Talk: How Citizens Construct a Social Problem*, New York: Aldine de Gruyter.

Saunders, C. (1997) 'Earn as You Learn: Connections Between Doing Qualitative Work and Living Daily Life,' *Qualitative Sociology*, 20/4: 457-464.

Savage, M., Barlow, J., Dickens, P. and Fielding, A. (1992) *Property, Bureaucracy and Culture*, London: Routledge.

Schivelbusch, W. (1995) *Disenchanted Night: The Industrialization of Light in the Nineteenth Century*, London: University of California Press.

Schlör, J. (1998) *Nights in the Big City: Paris; Berlin; London 1840-1930*, London: Reaktion Books.

Schwalbe, M., Godwin, S., Holden, D., Schrock, D., Thompson, S. and Wolkomir, M. (2000) 'Generic Processes in the Reproduction of Inequality: An Interactionist Analysis,' *Social Forces*, 79/2: 419-452.

Scott, M. and Lyman, S. (1968) 'Accounts,' *American Sociological Review*, 33/1: 46-62.

Sennett, R. (1990) *The Conscience of the Eye: The Design and Social Life of Cities*, London: Norton.

Sennett, R. (1996) *The Uses of Disorder: Personal Identity and City Life*, London: Faber and Faber.

Sennett, R. (2000) 'Reflections on the Public Realm,' in G. Bridge and S. Watson (eds.) *A Companion to the City*, Oxford: Blackwell.

Shadwell, A. (1923) *Drink in 1914-1922: A Lesson in Control*, London: Longmans, Green and Co.

Shearing, C. and Stenning, P. (1987) 'Say Cheese! The Disney Order that's not so Mickey Mouse,' in C. Shearing and P. Stenning (eds.) *Private Policing*, Newbury Park, California: Sage.

Shearing, C. and Wood, J. (2003) 'Nodal Governance, Democracy and the New 'Denizens,' *Journal of Law and Society*, 30/3: 400-419.

Shepherd, J. (1990) 'Violent Crime in Bristol: an Accident and Emergency Department Perspective,' *British Journal of Criminology*, 30: 289-305.

Shepherd, J. (1994) 'Violent Crime: the Role of Alcohol and New Approaches to the Prevention of Injury,' *Alcohol and Alcoholism*, 29, 5-10.

Shepherd, J. and Brickley, M. (1996) 'The Relationship Between Alcohol Intoxication, Stressors and Injury in Urban Violence,' *British Journal of Criminology*, 36/4: 546-564.

Shuy, R. (1993) *Language Crimes: The Use and Abuse of Language Evidence in the Courtroom*, Oxford: Blackwell.

Sime, S. (2004) *A Practical Approach to Civil Procedure*, 7th ed., Oxford: Oxford University Press.

Skogan, W. and Maxfield, M. (1981) *Coping with Crime: Individual and Neighborhood Reactions*, Beverly Hills: CA: Sage.

Slapper, G. and Tombs, S. (1999) *Corporate Crime*, Harlow: Longman.

Smith, A. ([1776] 1979) *An Enquiry into the Nature and Causes of the Wealth of Nations*, edited by R. Campbell and A. Skinner, Oxford: Clarendon Press

Snow, D., Robinson, C. and McCall, P. (1991) "Cooling Out" Men in Singles Bars and Nightclubs: Observations on the Interpersonal Survival Strategies of Women in Public Places' *Journal of Contemporary Ethnography*, 19/4: 423-449.

Solon, M. (2004) 'Experts: Take Your Pick or Independently Assessed,' *The Barrister*, 20, 14 April: 17.

South, N. (1999) *Drugs: Cultures, Controls and Everyday Life*, London: Sage.

Spink, J. and Bramham, P. (1999) 'The Myth of the 24-hour City,' in P. Bramham and W. Murphy (eds.) *Policy and Publics: Leisure, Culture and Commerce*, Eastbourne: Leisure Studies Association.

Stanko, E. (1997) 'Safety Talk: Conceptualizing Women's Risk Assessment as a 'Technology of the Soul' *Theoretical Criminology*, 1/4: 479-499.

Stedman Jones, G. (1983) *Languages of Class: Studies in English Working Class History 1832-1982*, Cambridge: Cambridge University Press.

Steele, C. and Josephs, R. (1990) 'Alcohol Myopia: Its Prized and Dangerous Effects,' *American Psychologist*, 45: 921-933.

St. John-Brooks, K. with assistance from Winstanley, K. (1998) *Keeping The Peace: A Guide to the Prevention of Alcohol-Related Disorder*, second edition, London: The Portman Group.

Stockwell, T. (2001) 'Responsible Alcohol Service: Lessons from Evaluations of Server Training and Policing Initiatives,' *Drug and Alcohol Review*, 20, 257-265.

Stockwell, T., Lang, E. and Rydon, P. (1993) 'High Risk Drinking Settings: The Association of Serving and Promotional Practices with Harmful Drinking,' *Addiction*, 88: 1519-1526.

Strategy Unit (2003) *Strategy Unit Alcohol Harm Reduction Project: Interim Analytical Report, London: Cabinet Office Strategy Unit.* www.pm.gov.uk/output/Page 4498.asp.

Strategy Unit (2004) *Alcohol Harm Reduction Strategy for England*, London: Cabinet Office Strategy Unit. www.strategy.gov.uk/output/Page3669.asp

Sudnow, D. (1965) 'Normal Crimes: Sociological Features of the Penal Code in a Public Defender Office,' *Sociological Problems*, XII/3: 255-276.

Swift, J. [1726] (1965) 'A Voyage to the Houyhnhnms' in *Gulliver's Travels*, London: Methuen.

Swinden, E. (2000) 'Not a Pretty Sight: Poster Campaign that 'Promoted Drunken Behaviour' Withdrawn,' *Manchester Evening News*, 6 October: 3.

Sykes, G. and Matza, D. (1957) 'Techniques of Neutralization: A Theory of Delinquency,' *American Sociological Review*, 22: 664-670.

Tallon, A. and Bromley, R. (2002) 'Living in the 24-Hour City,' *Town and Country Planning*, November, 282-285.

Taylor, I. (1990) 'The Concept of 'Social Cost' in Free Market Theory and the Social Effects of Free Market Policies,' in I. Taylor (ed.) *The Social Effects of Free Market Policies: An International Text*, London: Harvester Wheatsheaf.

Taylor, I. (1999) *Crime in Context*, Cambridge: Polity.

Taylor, S. and Gammon, C. (1976) 'Aggressive Behaviour of Intoxicated Subjects: The Effect of Third-party Intervention,' *Journal of Studies on Alcohol*, 37: 917-30.

Thomas, C. and Bromley, R. (2000) City-centre Revitalisation: Problems of Fragmentation and Fear in the Evening and Night-time Economy, *Urban Studies*, 37: 1403-1429.

Thompson, B. (2004) 'Expert Witnesses in the Dock' *The Barrister*, 20, 14 April: 8-9.

Thornton, S. (1995) *Club Cultures: Music, Media and Sub-cultural Capital*, Cambridge: Polity.

Tierney, J. and Hobbs, D. (2003) *Alcohol-Related Crime and Disorder Data: Guidance for Local Partnerships*, London: Home Office.

Toch, H. (1992) *Violent Men: An Inquiry Into The Psychology of Violence*, Fourth Edition, Washington DC: American Psychological Association.

Tombs, S. (2002) 'Review Article: Understanding Regulation?' *Social & Legal Studies*, 11/1: 113-133.

Tomsen, S. (1997) 'A Top Night: Social Protest, Masculinity and the Culture of Drinking Violence', *British Journal of Criminology*, 37/1: 90-102.

Town Centres Limited (2001) *West End Entertainment Impact Study: Final Report, 2001*, London: City of Westminster.

Travis, A. (2005) 'Public Opposes Licensing Change,' *The Guardian*, 26 January: 10.

Tuck, M. (1989) *Drinking and Disorder: A Study of Non-Metropolitan Violence*, Home Office Research Study No. 108, London: HMSO.

Turvil, A. (2003) 'Introduction' in A. Turvil (ed.) *The Which? Pub Guide 2004*, London: Which? Books.

Urban Task Force (1999) *Towards an Urban Renaissance*, London: E&FN Spon.

Urry, J. (2000) 'City Life and the Senses,' in G. Bridge and S. Watson (eds.) *A Companion to the City*, Oxford: Blackwell.

Valentine, G. (1989) 'The Geography of Women's Fear,' *Area*, 21/4: 385-390.

Valverde, M. (2003) 'Police Science, British Style: Pub Licensing and Knowledges of Urban Disorder,' *Economy and Society*, 32/2: 234-252.

Valverde, M. and Cirak, M. (2003) 'Governing Bodies, Creating Gay Spaces: Policing and Security Issues in 'Gay' Downtown Toronto,' *British Journal of Criminology*, 43/1, 102-121.

Van Maanen, J., Manning, P. and Miller, M. (1989) 'Series Editors Introduction,' in J. Hunt, *Psychoanalytic Aspects of Fieldwork*, Qualitative Research Methods Series no. 18, Beverley Hills, CA: Sage.

Vasey, D. (1990) *The Pub and English Social Change*, New York: AMS Press.

Vogler, R. (1991) *Reading the Riot Act: The Magistracy, the Police and the Army in Civil Disorder*, Milton Keynes: Open University Press.

Von Hirsch, A. and Shearing, C. (2000) 'Exclusion from Public Space,' in A. von Hirsch, D. Garland and A. Wakefield (eds.) *Ethical and Social Perspectives on Situational Crime Prevention*, Oxford: Hart Publishing.

Wade, W. and Forsyth, C. (2004) *Administrative Law*, 9th ed., Oxford: Oxford University Press.

Wakefield, A. (2000) 'Situational Crime Prevention in Mass Private Property' in A. von Hirsch, D. Garland and A. Wakefield (eds.) *Ethical and Social Perspectives on Situational Crime Prevention*, Oxford: Hart Publishing.

Walker, A. (2001) *Safer Doors: A Training Guide for Professional Door Supervisors*, Geddes and Grossett: New Lanark.

Walker, D. (2001) *Heroes of Dissemination*, Swindon: ESRC.

Walkowitz, J. (1992) *City of Dreadful Delight: Narratives of Sexual Danger in Late-Victorian London*, London: Virago Press.

Warburton, A. and Shepherd, J. (2004) *An Evaluation of the Effectiveness of New Policies Designed to Prevent and Manage Violence through an Interagency Approach (a Final Report for WORD)*, Cardiff: Cardiff Violence Research Group.

Warr, M. (1990) 'Dangerous Situations: Social Context and Victimization,' *Social Forces*, 68: 891-907.

Watt, P. and Stenson, K. (1998) 'The Street: 'It's A Bit Dodgy Around There': Safety, Danger, Ethnicity and Young People's Use of Public Space' in T. Skelton and G. Valentine (eds.) *Cool Places: Geographies of Youth Cultures*, London: Routledge.

Webb, S. and Webb, B. (1903) *The History of Liquor Licensing in England Principally from 1700 to 1830*, London: Longmans, Green and Co.

Weber, M. (1949) *The Methodology of the Social Sciences*, Glencoe, IL: The Free Press.

Wechsler, H., Davenport, A., Dowdall, G., Moeykens, B. and Castillo, S. (1994) 'Health and Behavioral Consequences of Binge Drinking in College: A National Survey of Students at 140 Campuses,' *Journal of the American Medical Association*, 272: 1672-1677.

Wedel, M., Pieters, J., Pikaar, N. and Ockhuizen, T. (1991) 'Application of a Three-Compartment Model to a Study of the Effects of Sex, Alcohol Dose and Concentration, Exercise and Food Consumption on the Pharmacokinetics of Ethanol in Healthy Volunteers,' *Alcohol and Alcoholism*, 26: 329-36.

Weightman, G. (1992) *Bright Lights, Big City: London Entertained 1830-1950*, London: Collins and Brown.

Weir, A. (1984) 'Obsessed with Moderation: The Drinks Trade and the Drink Question (1870-1930),' *British Journal of Addiction*, 79: 93-107.

Wellborn III. O. (1991) 'Demeanour,' *Cornell Law Review*, 76: 1075-1105.

Wellman, F. (1997) *The Art of Cross-Examination*, 4th edn., New York: Simon and Shuster.

Wells, S., Graham, K. and West, P. (1998) "The Good, the Bad, and the Ugly": Responses by Security Staff to Aggressive Incidents in Public Drinking Settings,' *Journal of Drug Issues*, 28/4: 817-836.

Wikström, P.-O. (1995) 'Preventing City Centre Street Crimes,' in M. Tonry and D. P. Farrington (eds.) *Building a Safer Society: Strategic Approaches to Crime Prevention, Crime and Justice: A Review of Research, Vol. 19*, London: University of Chicago Press.

Williams, R. (1998) 'Erving Goffman' in R. Stones (ed.) *Key Sociological Thinkers*, Houndmills: Palgrave.

Williams, R. (2000) *Making Identity Matter*, Durham: Sociology Press.

Williams, S. and Bendelow, G. (1998) *The Lived Body: Sociological Themes, Embodied Issues*, London: Routledge.

Wilson, G. (1940) *Alcohol and the Nation*, London: Nicholson and Watson.

Wilson, J.Q. and Kelling, G. (1982) 'Broken Windows' *Atlantic Monthly*, March, 29-38.

Winlow, S. (2001) *Badfellas: Crime, Tradition and New Masculinities*, Oxford: Berg.

Wolkomir, J. and Wolkomir, R. (2001) 'When Bandogs Howle and Spirits Walk,' *Smithsonian*, January: 38-44.

Worpole, K. (1992) *Towns for People: Transforming Urban Life*, Buckingham: Open University Press.

Worpole, K. (2003) 'Second Thoughts on the 24-Hour City: Memorandum by Ken Worpole,' *Office of the Deputy Prime Minister: Housing, Planning, Local Government and the Regions Committee-The Evening Economy and the Urban Renaissance*, EVE 33, London: The Stationery Office.

Worpole, K. and Greenhalgh, L. (1996) *The Freedom of the City*, London: Demos.

Wright Mills, C. (1970) *The Sociological Imagination*, Harmondsworth: Penguin.

Wrottesley, F. (1930) *Letters to a Young Barrister*, London: Sweet and Maxwell.

Wynne, D. and O'Connor, J. (with statistical analysis by D. Phillips), (1998) 'Consumption and the Post-modern City' *Urban Studies*, 35/5-6: 841-864.

Young, I. (2000) *Inclusion and Democracy*, Oxford: Oxford University Press.

Znaniecki, F. (1934) *The Method of Sociology*, New York: Farrar and Rinehart.